

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No 12,984

COLUMBIA TYPOGRAPHICAL UNION, No. 101,
Appellant.

v.

THE EVENING STAR NEWSPAPER COMPANY,
Appellee.

Appeal From the United States District Court for the
District of Columbia



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Appeal From the United States District Court for the
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JOINT APPENDIX

1

Filed June 14, 1954

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2545-'54

THE EVENING STAR NEWSPAPER COMPANY, 11th Street and
Pennsylvania Ave., N.W., Washington, D. C., a
corporation, *Plaintiff*

v.

COLUMBIA TYPOGRAPHICAL UNION, No. 101, 1701 K St., N.W.,
Washington, D. C., *Defendant*

**Complaint for Declaratory Judgment and Damages for
Breach of Contract**

1. Jurisdiction is conferred by Section 301 of the Labor Management Relations Act of 1947 (29 U.S.C.A. sec. 185) and the Federal Declaratory Judgment Act, as amended, (28 U.S.C.A. secs. 2201, 2202).

2. Plaintiff is a corporation doing business of publishing and selling newspapers in the District of Columbia and is incorporated under an act of Congress.

3. Defendant is a labor organization representing plaintiff's employees employed in its composing room as machine men, hand men, floor men and proof readers. Defendant is now, and has been at all times referred to herein, the exclusive bargaining representative for those employees with the plaintiff. Defendant maintains its principal office in the District of Columbia and its duly authorized officers and agents are engaged in the District of Columbia in representing or acting for its members, including the described employees of plaintiff.

4. On June 12, 1951, plaintiff (together with Washington Daily News Company. Washington Times-Herald,

Inc., and The Washington Post Company) and defendant entered into a newspaper contract and scale of prices agreement (hereinafter referred to as "Agreement"). A copy of that Agreement is attached hereto as Exhibit A and is made a part hereof. During its effective period, which included all times herein referred to, the Agreement established and governed the rights and obligations of the parties with respect to plaintiff's composing room operations and the employees therein. Section 1 (a) of the Agreement stated:

"This agreement alone shall govern relations between the parties on all subjects concerning which any provision is made in this agreement, and any dispute involving any such subjects shall be determined in accordance with the local Code of Procedure set forth in Section 6 hereof."

Section 20(a) of the Agreement provided:

"The operation, authority and control of each composing room shall be vested exclusively in the office [the newspaper company] through its representative, the foreman, who shall be a member of the Union. No foreman shall be subject to fine, discipline or expulsion by the Union for any act in the performance of his duties as foreman when such action is authorized by the agreement."

At all times hereinafter mentioned S. K. Trunnell was the foreman in charge of plaintiff's composing room and a member of defendant union as he was required to be under the terms of the Agreement.

5. On June 17, 1951, the members of defendant union at a regular meeting approved a report of defendant's Executive Committee, which recommended the assessment of a fine of one day's pay against S. K. Trunnell as an "admonition" because of acts performed by him, notwithstanding the fact that those acts were done by Trunnell in the performance of his duties as plaintiff's foreman and were authorized by the Agreement.

6. On June 18, 1951, Peyton R. Evans, a representative of plaintiff, addressed a letter to Joseph Z. Lins, Secretary of defendant union, in which he protested the assessment of the fine and the imposition of discipline on S. K. Trunnell for the reason that Trunnell was being fined and disciplined because of acts performed by him as plaintiff's foreman and which were authorized by the Agreement, and that, therefore, such action by defendant was
3 in violation of Section 20(a) of the Agreement.

Evans further demanded that the controversy be promptly submitted to the Joint Standing Committee provided for in Section 6 of the Agreement and that the conditions prevailing prior to the controversy be maintained until the matter be decided by the Committee, all in accordance with Section 6 of the Agreement.

7. Notwithstanding the provisions of the Agreement with respect to the maintenance of conditions prevailing prior to the controversy, defendant demanded and Trunnell paid, under protest, the fine of Forty Dollars (\$40.00) to defendant. The payment by Trunnell of the Forty Dollars (\$40.00) was a loss suffered by him because of his acts which were authorized by the Agreement and were performed by him as plaintiff's foreman for plaintiff's benefit. As it was obliged to do, plaintiff reimbursed Trunnell for such loss by paying over to him the sum of Forty Dollars (\$40.00).

8. After repeated demands by plaintiffs, the controversy was referred to the Joint Standing Committee of four members, who being unable to reach a decision selected a fifth member in accordance with the provisions of Section 6(g) of the Agreement. On November 16, 1951, the Joint Standing Committee made an arbitration decision in which it was held that defendant's action in imposing the fine on Trunnell was a violation of Section 20(a) of the Agreement. A copy of that decision is attached hereto as Exhibit B and made a part hereof.

9. Notwithstanding the fact that Section 6(g) of the Agreement made the Joint Standing Committee's November 16, 1951, decision final and binding against defendant, it has failed and refused to abide by that decision in that it has consistently refused the demands of plaintiff for the payment to the latter of the sum of Forty Dollars (\$40.00).

WHEREFORE, plaintiff demands:

1. That the Court enter a judgment declaring that defendant's actions (1) in imposing a fine on S. K. Trunnell, (2) in refusing to abide by the terms of the November 16, 1951, decision of the Joint Standing Committee and (3) in refusing to pay to plaintiff the
4 sum of Forty Dollars (\$40.00), are violations of the June 12, 1951, Agreement;
2. That the Court enter a judgment in favor of plaintiff for Forty Dollars (\$40.00) and costs;
3. That the Court grant such other and further relief as it deems just.

HAMILTON AND HAMILTON

By WILLIAM B. JONES

William B. Jones

Attorneys for Plaintiff

916 Union Trust Building
Washington, D. C.

Exhibit A

5

Filed June 14, 1954

AGREEMENT AND SCALE OF PRICES**BETWEEN****WASHINGTON PUBLISHERS ASSOCIATION****AND****COLUMBIA TYPOGRAPHICAL UNION, No. 101**

This agreement made and entered into this 1st day of May, 1951, by and between the Washington Publishers Association, composed of the Washington Daily News Company, Inc., The Washington Post Company, The Evening Star Newspaper Company and Washington Times-Herald, Inc., all of Washington, D. C., hereinafter referred to as the Publishers and/or the office and Columbia Typographical Union, No. 101, hereinafter referred to as the Union.

The language and spirit of this agreement guarantee the prompt and faithful performance by the Union and the Publishers of all obligations imposed by the terms of this agreement, all without waiting for the consideration or adjustment of any differences of opinion respecting the rights of either party. Both parties agree that whenever any differences of opinion as to the rights of either under the agreement shall arise, or whenever any dispute as to the construction of the agreement or any of its provisions takes place, such difference or dispute shall be promptly resolved in the manner provided in this agreement without strike, lockout, diminution, or interruption of any kind, to the end that fruitless controversies shall be avoided, good feeling and harmonious relations be maintained, and the prosecution of the business in which the parties have a community of interest shall be assured.

Section 1. (a) This agreement alone shall govern relations between the parties on all subjects concerning which any provision is made in this agreement, and any dispute involving any such subjects shall be determined in accordance with the local Code of Procedure set forth in Section 6 hereof.

(b) The General Laws of the International Typographical Union, in effect January 1, 1951, not in conflict with law, shall govern relations between the parties on those subjects concerning which no provision is made in this agreement.

Section 2. If any provision of this agreement is held contrary to any local or Federal law by a court of competent jurisdiction, such provision shall be continued in effect only to the extent permitted and all other and remaining provisions of the agreement shall continue in full force and effect during the full term thereof.

Section 3. All time covered by this agreement belongs to the Office.

TERM OF CONTRACT

Section 4. (a) This agreement shall become effective on May 1, 1951, and shall remain in effect to and including September 30, 1952, except as hereinafter provided.

(b) Not more than 90 days nor less than 60 days prior to September 30, 1952, either party may give the other party written notice of its desire to enter into a new agreement. If and when such notice is given, negotiations shall be entered into promptly and shall proceed with due diligence. Any notice given under the provisions of this section shall be accompanied by a copy of the proposed new agreement. The party receiving notice given in accordance with this section may deliver to the other party within 30 days a counter-proposal containing any proposal or proposals desired. In the event of failure of the respondent party to submit a counter-proposal

6 within the 30-day period herein provided, the existing contract shall be considered as having been filed as said party's counter-proposal. If an agreement has not been reached upon the date this agreement expires, the terms thereof shall govern during the continuance of negotiations; Provided, that after September 30, 1952, either party may break off negotiations by giving notice to the other party.

Section 5. Amendments agreed upon in negotiations shall become effective at the date or dates mutually agreed upon.

JOINT STANDING COMMITTEE

Section 6. The following local Code of Procedure is made part of this agreement:

(a) A Joint Standing Committee shall be maintained to consist of two representatives of the Publishers and two representatives of the Union. In case of a vacancy through refusal to serve or inability to be present, a substitute shall be appointed immediately.

(b) To this committee shall be referred, except as hereinafter provided, any controversies involving interpretation or application of this agreement (including controversies over discharge) which cannot be otherwise settled after reasonable effort. It is understood and agreed that this committee is established by the terms of this agreement for the settlement of such disputes, and that the committee is the proper body to take up such disputes and settle them in the manner herein provided.

(c) If any controversy arises involving interpretation or application of the provisions of this agreement, the conditions prevailing prior to the controversy (except in case of discharge) shall be maintained until the matter is settled by agreement or by decision of the Joint Standing Committee.

(d) Whenever there is a disagreement involving interpretation or application of the provisions of this agree-

ment, the aggrieved party shall address the other party in writing, stating in full the entire grievance.

(e) The two parties or their representatives shall promptly attempt to reach an agreement. If an agreement satisfactory to both is reached, their decision shall be final and binding, subject only to appeal by either party, within ten days, to the Joint Standing Committee. Any decision by agreement or otherwise shall not be retroactive prior to the date the issue was first raised.

(f) In the event of failure to reach an agreement within ten days of original notice, the entire matter shall be referred to the Joint Standing Committee, and its decision shall be final and binding.

(g) When a controversy is referred to the Joint Standing Committee, this committee shall convene within five days to hear both parties or their representatives. If no decision is reached within five days then a fifth member shall be added to the committee, who shall not be a Publisher, a member of the Union, or a relative or employee of either. In case the committee is unable to agree upon a fifth member within seven (7) days, such fifth member shall be selected from a list of six persons, three selected by the Publishers and three selected by the Union. The Publishers and the representatives of the Union shall each have the right to strike the names of two persons from the list, and the fifth member of the committee shall be drawn by lot from the two persons remaining on said lists by some disinterested person. The decision of this committee shall be final and binding. If discharged employee is reinstated, compensation for time lost as a result of his discharge shall be considered and decided by this committee.

(h) The controversies or disagreements which may be referred to the Joint Standing Committee, and decided in accordance with the provisions of this section, shall be limited exclusively and specifically

to differences in the interpretation and enforcement of the terms of this agreement, including the question of whether, under Section 1, the disputed issue is covered by the terms of this agreement, and including the interpretation of all language contained in this agreement. The Joint Standing Committee may not, by its decision, provide new or different provisions of the agreement between the parties.

(i) The General Laws of the International Typographical Union shall not be subject to arbitration under the local Code of Procedure, and the interpretation of such laws is the exclusive right of the International Typographical Union. Nothing contained in this paragraph shall limit or impair Section 1 of this agreement. In connection with any differences or disputes which may arise between the parties to this agreement during the life of this agreement, both parties agree that they will abide by all the provisions of this section and will not request or accept release from their commitment to arbitrate any dispute which may properly be settled by the Joint Standing Committee.

(j) This Joint Standing Committee shall have no jurisdiction pertaining to differences arising over the negotiation of any succeeding agreement.

CONSIDERATIONS

Section 7. (a) The Publishers hereby recognize the Union as the exclusive bargaining representative of all employees covered by this agreement.

(b) Except as permitted in this section, none but journeymen and apprentices shall be employed by the Publishers in their respective composing rooms or the departments thereof.

(c) The words 'employee' and 'employees' when used in this agreement shall apply to journeymen and apprentices.

The term 'journeymen and apprentices' shall in no way be understood to apply exclusively to members of the Union.

(d) The jurisdiction of the Union recognized under this agreement is defined as all of the composing room work performed by journeymen and apprentices in the composing rooms of the Publishers under a previous agreement between the parties dated November 18, 1946, and comprises all of the work performed in the composing rooms under a previous agreement between the parties dated November 18, 1946, by: hand compositors; operators and machinists for all typesetting machines, saws, mitering machines, monotype and other material-making machines, for Ludlow machines, and for all mechanical devices which cast type or slugs; makeup men; bankmen; proofreaders; markup men; copy cutters and proof press operators and any other work performed in the composing rooms of the Publishers by journeymen and apprentices under a previous agreement dated November 18, 1946, and the Publishers shall make no other contract covering such work; Provided, that the Publishers shall be relieved of this commitment in the event of a strike, slowdown, other work stoppage or other interference with production until the Joint Standing Committee has determined that full normal production has been resumed in good faith; Provided, also, that except as provided in Par. (g) hereof, this section shall not be construed as adding to or taking from the jurisdiction of the Union exercised under a previous contract dated November 18, 1946.

(e) Office boys and laborers (not registered apprentices nor journeymen) may be employed in the composing room for janitor duties, to smelt and distribute metal to machines, answer telephones, carry messages, and to perform other miscellaneous tasks presently performed by office boys and laborers; Provided however, that only those office boys and laborers now employed in operating proof presses and/or carrying type on galleys may con-

tinue to do such work during the tenure of their employment.

(f) All news and advertising matter set and used shall be proofread at least once.

8 (g) The Union and the Publishers are agreed that both would benefit from an experimental program, during the term of this agreement covering the introduction, operation and use of teletypesetting equipment. In order to facilitate the carrying out of such experimental program they agree as follows:

1. The Publishers grant to the Union jurisdiction over the operation of the devices named above and the Publishers shall make no other contract covering such work; Provided, the Publishers shall be relieved of this commitment in the event of a strike, slowdown, other work stoppage or other interference with production until the Joint Standing Committee has determined that full normal production has been resumed in good faith.

2. The Union and the Publishers shall each designate immediately two representatives to serve on a committee to be known as the Joint Experimental Committee.

3. The Joint Experimental Committee shall proceed with all due diligence to gather information relating to the operation of the devices named above and to work out procedures and conditions covering the introduction of, training for, proper manning requirements, standards of competency, scales of wages and other matters pertaining to their use and operation.

4. Whenever the above-named devices are introduced by one or more of the Publishers, the Joint Experimental Committee shall have the power during the period of experimentation to determine all conditions applicable to their operation and use. After any such device is introduced by one or more of the Publishers, the Publisher or Publishers, as the case may be, and the Union will

cooperate fully in efforts to obtain maximum production therefrom.

5. Any Publisher participating in the experimental program shall have the right to use all production resulting from the program.

(h) No other process, machinery or equipment which functions as a substitute for or evolution of the typesetting processes now in use in the composing rooms of the Publishers, shall be used during the term of this contract for work on material that is printed in the newspapers of the Publishers; Provided, however, that this commitment shall not be construed as a recognition by the Publishers, or a waiver of claim by the Union, of Union jurisdiction over any such process, machinery, or equipment, and provided further that the Publishers shall be relieved of this commitment in the event of a strike, slowdown, other work stoppage or other interference with production, until the Joint Standing Committee has determined that full normal production has been resumed in good faith. Provided further that before any substitute processes are introduced the Publishers shall call upon the Union to correct any claimed interference with production. Provided also that except as provided in Par. (g) hereof, this section shall not be construed as adding to or taking from the jurisdiction of the Union exercised under a previous contract dated November 18, 1946.

Section 8. The Union offers, if called upon by any Publisher, to use every reasonable means within its power to provide a sufficient number of competent employes to operate the composing room and its machinery and equipment efficiently and adequately.

Section 9. Nothing in this agreement shall obligate the office to hire men when there is no work to be performed, nor shall any payment be made for any day or days on which no paper is published. The sole right of the Publishers to determine the number of men to be employed

and the specific days on which publication shall be maintained shall not be open to question.

WAGES

Section 10. (a) Except as otherwise provided in this agreement, an all-time scale shall prevail as follows:

9	Day Shift	
	Shift of 7 hours	\$19.50
	Hour	2.7857
	Overtime, per hour	4.1786
	Week, 5 shifts of 7 hours each	97.50
	Sunday, afternoon or Sunday evening papers, 7 hours	21.00

Night Shift

	Shift of 7 hours	\$20.50
	Hour	2.9286
	Overtime, per hour	4.3929
	Week, 5 shifts of 7 hours each	102.50

Third Shift

	Shift of 7 hours	\$21.50
	Hour	3.0714
	Overtime, per hour	4.6071
	Week, 5 shifts of 7 hours each	107.50

(b) Effective January 1, 1952, except as otherwise provided in this agreement, an all-time scale shall prevail as follows:

Day Shift

	Shift of 7 hours	\$19.80
	Hour	2.8286
	Overtime, per hour	4.2429
	Week, 5 shifts of 7 hours each	99.00
	Sunday afternoon or Sunday evening papers, 7 hours	21.30

Night Shift

Shift of 7 hours	\$20.80
Hour	2.9714
Overtime, per hour	4.4571
Week, 5 shifts of 7 hours each	104.00

Third Shift

Shift of 7 hours	\$21.80
Hour	3.1143
Overtime, per hour	4.6715
Week, 5 shifts of 7 hours each	109.00

(c) Extras hired by the office who have not previously refused to accept full-time situations in such office shall be paid fifty cents per shift in addition to the regular scale.

Section 11. Notwithstanding some employes may receive above the scale, no employe has a right to demand more than it calls for, no matter in what capacity he may be employed.

Section 12. Employes who are hired and who are available for work at the designated starting time shall receive not less than a shift's pay except when discharged for cause or when excused at their own request.

OVERTIME

Section 13. All time worked in excess of the regular unit of hours, except as hereinafter provided, shall
 10 be paid for at one and one-half times the regular rate, based upon the hourly wage paid the employe. In computing the regular hourly rate for overtime purposes on shifts for which a penalty is provided, the penalty shall not be included. No provisions of this contract shall exempt any employe from canceling overtime except the foreman; Provided, when the foreman performs mechanical work he shall take off his overtime.

Section 14. No employe shall be required or permitted to hold a situation of more than five (5) days or of more than five (5) nights, or five (5) third shifts or of more than a combination of days, nights and/or third shifts totaling five (5) in any financial week. When required to work on their regular off days or off nights, employes shall receive price and one-half for such shifts worked.

CALLBACK

Section 15. In case of a recall after a man has left the composing room for the day, one dollar extra shall be paid plus pay for at least four hours at time and one-half of the regular rate for the shift on which he was employed prior to the recall.

HOURS

Section 16. (a) The hours of labor shall be continuous with the exception of an intermission of not over one-half hour for lunch. Except by mutual agreement, a man may not be required to go to lunch until two and one-half hours after his starting time and not later than four and one-half hours after his starting time. No employe shall be allowed to leave the office during working hours except with the permission of the foreman.

(b) All work performed during the day hours shall be at the day rate, and all work performed during the night hours shall be at the night rate, except as herein provided.

(c) No chapel meetings shall be held at such times as to delay publication.

Section 17. Shifts which begin not earlier than 7 a.m. and end not later than 6 p.m. shall be paid for at the day rate. Shifts which begin not earlier than 6 p.m. and end not later than 7 a.m. shall be paid for at the night rate. Shifts which begin between 10:30 a.m. and 4 p.m. and end after 6 p.m. shall be paid for at the night rate plus a

penalty of \$1. Shifts which begin at or after 4 p.m. and before 6 p.m. shall be paid the overtime rate of price and one-half of the night scale for such part of the shift as is worked before 6 p.m. and the straight-time night rate for that part of the shift worked after 6 p.m. Shifts which begin between 9 p.m. and 7 a.m. shall be paid for at the third-shift rate.

Section 18. Twelve (12) hours must elapse between the scheduled quitting time of an employe's regular shift and his next regular scheduled starting time.

Section 19. Payment of wages shall be made by check or by cash at the option of the Publishers not later than 96 hours after the close of the Publisher's financial week; Provided, if after the effective date of this agreement, a Publisher changes from payment by cash to payment by check, payment in cash shall continue to be made to those present employes who express individually, in writing, a desire to continue receiving cash; Provided further, employes laid off or discharged before the regular pay day shall be entitled to and shall receive in cash whatever sum or sums may be due them not later than the close of the next work day.

FOREMEN

Section 20. (a) The operation, authority and control of each composing room shall be vested exclusively in the office through its representative, the foreman, who shall be a member of the Union. No foreman shall be subject to fine, discipline or expulsion by the Union for any act in the performance of his duties as foreman when such action is authorized by this agreement.

(b) In offices working day and/or night shifts and/or third shifts, an assistant foreman may be in charge of the shift. Assistants may be designated to direct the work, but only the foreman may employ or discharge.

(c) In filling vacancies, persons considered by the foreman to be capable as substitutes shall be deemed competent to fill regular situations and the competent substitute oldest in continuous service shall have prior right in the filling of the first vacancy. This section shall apply to incoming as well as outgoing foremen.

Section 21. (a) The foreman shall be the judge of a man's competency and shall determine the number of men to be employed in any capacity in the work of the composing room. He shall give out the minimum number of regular situations necessary to meet office requirements.

(b) The foreman shall hire all employes for composing room operations. Applications for work must be made to the foreman, who as the representative of the office is the only person having the authority to employ journeymen in the composing room. A journeyman is defined as:

(1) a person who prior to the effective date hereof, worked as such in the composing rooms of the parties signatory to this contract;

(2) a person who has completed apprentice training under the provisions of this contract; or

(3) any other person who has had a minimum of 6 years' experience at the trade; the foreman may, in the absence of clear and convincing evidence to the contrary, accept as sufficient proof of such experience at the trade either (a) a current working card of Columbia Typographical Union, No. 101, or (b) a letter or letters from a former employer or employers showing such experience; the foreman may, however, in conjunction with a designated representative of the Union employed in the composing room, accept such other evidence of experience as these two deem adequate; if they are in doubt about the applicant's claim of 6 years' experience at the trade, they may give the applicant an immediate test (the text of which has been agreed upon by the parties hereto and

marked Exhibit "A" for the purpose of identification); should there then be disagreement between the foreman and the representative of the Union as to the experience of the applicant, the question shall be referred immediately to the Joint Standing Committee.

(c) Only applicants who qualify as journeymen are eligible to have their names placed on the slipboard. Membership or non-membership in a labor organization shall not be a factor in such hiring or in the tenure of employment.

(d) It is understood that the experience and test referred to herein are designed only to establish the applicant's status as a journeyman and his eligibility to be hired, and do not affect the right of the foreman to discharge him for incompetency after he is hired.

(e) It is recognized that nothing in this section shall interfere with the right of journeymen to employ competent substitutes without consultation or approval of the foreman.

(f) A slipboard shall be maintained in each composing room on which shall be listed the names of all extras who desire to work in said composing room.

12 Section 22. Employes must establish competency either as machinists, floormen or operators.

Section 23. Employes may be transferred from shift to shift whenever the exigencies may require. Insofar as practicable, such transfers shall be arranged by mutual consent and according to their priority standing in the office.

Section 24. Foremen may discharge (1) for incompetency; (2) for neglect of duty; (3) for violation of office rules, which must be kept conspicuously posted and which shall in no way abridge the civil rights of employes, or their rights under accepted International Typo-

graphical Union laws; and (4) to decrease the force, as provided in Section 32. Failure to discharge shall in no case be construed as a waiver of the foreman's right to discharge for any of the above causes in other instances.

Section 25. A discharged employe shall have the right to appeal in accordance with the provisions of this contract, and if an office rule has been applied to bring about his discharge, he shall have the right to question the fairness of the application of such rule to the facts and circumstances of his particular case.

Section 26. When an employe is discharged for any reason other than to reduce the number of regular situations, he may demand, and the foreman shall give in writing, the reason for discharge; Provided, such demand shall be made within seventy-two (72) hours after a man is informed of discharge. When such discharge is contested by such employe, or in his behalf by a party to this contract, the controversy shall be submitted to the Joint Standing Committee.

Section 27. An employe discharged for incompetency, neglect of duty or a minor reason shall not be denied the privilege of seeking work in the office for a period longer than six months.

Section 28. Proofreaders shall not be held responsible for errors in matter when a copy holder is not furnished. No employe shall be held financially responsible for errors; nor shall any employe be held responsible for errors in railroaded matter.

Section 29. No employe shall have his days off changed without at least seventy-two (72) hours' posted notice; Provided, a change shall not be made in such manner as to prevent a situation-holder from working five shifts within the financial week; Provided further that temporary changes of days off in weeks in which a holiday occurs shall not be made.

PRIORITY

Section 30.. Situations shall be given out and extras shall be hired in strict office priority order, regardless of classification of work; Provided, however, that machinists shall be hired in their priority order. The foreman shall designate the particular days or nights or third shifts or combination of days, nights or third shifts constituting a situation.

Section 31. There shall be no restrictions on transfers to different classifications of work within a shift, it being understood and agreed that employes may be transferred at any time and from time to time to perform any duties pertaining to work in the composing room assigned to them by the foreman. Employes who are transferred to a class of work upon which they do not claim competency shall not be discharged for incompetency in such work. Provided, that no employe shall be transferred to machinist's work while a competent machinist is available.

Section 32. When it becomes necessary to decrease the number of regular situations the employe with the lowest priority standing in the office shall be laid off first, except in the case of machinists, who shall be laid off in their priority order.

13

EXTRA WORK

Section 33. Extra work is hereby defined as all work not performed by the regulars or their substitutes.

REPRODUCTION

Section 34. (a) When type, plates or matrices of a local advertisement, set in the composing room of one publisher, or supplied thereto from another source, are furnished to and used by another publisher or publishers in lieu of copy, such local advertisements must be reset as nearly like the original as the equipment of the office will permit, assembled and proofread, and proof submitted to the

chapel chairman. A local advertisement is defined as an advertisement of any concern selling a product at retail in the local field; or an advertisement wherever set advertising a distinctively local concern. All such matter shall be reproduced prior to midnight of the seventh day following the day of publication as shown by the date line of the edition. Any such matter not reproduced within the above period shall be reproduced by extras employed for that purpose or on overtime; Provided, however, that if extras are not available for office hire on reproduction of out-of-date matter, such out-of-date matter may be reproduced at straight-time rates at any time prior to midnight of the sixtieth day following the day of publication as shown by the date line of edition. After midnight of the sixtieth day out-of-date matter shall be reproduced, beginning with the next succeeding shift, by extras hired for that purpose or on overtime. Provided further, this section does not require resetting of type, plates or matrices transferred between newspapers owned by the same individual, firm or corporation, when such newspapers are published in the same establishment, complimentary advertisements or promotional advertisements of the Publishers. The term, "out-of-date matter," as used in this section, means matter subject to reproduction which has not been reproduced within the seven or sixty-day periods specified herein.

(b) This shall not apply to type, plates or matrices of national advertisements with or without names of local concerns, or to matter received from outside of the city of Washington, including printed supplements. Reproduction shall not be required during extraordinary emergencies, such as fire, flood, explosions or other unforeseen disasters, including the pi of a form.

Section 35. It is understood and agreed that Section 34 will continue to be applied in accordance with the Joint Standing Committee decision dated May 27, 1938.

STRUCK WORK

Section 36. (a) So far as permitted by law, the Publishers shall not require employees covered by this agreement, and the Union reserves the employees' right to refuse to process material received from, or destined exclusively for, a job shop or newspaper composing room (other than the composing rooms of the Publishers signatory to this contract), in which an authorized strike by, or a lockout of, a subordinate union of the I. T. U., is in progress. There will be no refusal to process national (general) advertising or syndicate matter, or to process local advertising provided such local advertising is reproduced; it being understood that the Publishers will not furnish advertisers or their agents or others with type or mats of composing room material not printed in their papers. This restriction on type and mats shall not apply to the usual distribution of syndicated material nor to promotional matter of signatories to this contract. The Union will give the Publishers forty-eight (48) hours' notice that a strike or lockout is in progress before the processing of materials may be stopped in accordance with the foregoing provisions.

(b) The exception contained in Paragraph (a) in favor of the composing rooms of the Publishers signatory to this contract will cease to be operative if and when
 14 an alleged strike is found by the Joint Standing Committee to be in fact a lockout or to have been caused by the refusal of a publisher to comply with the provisions of Section 6 for the peaceful settlement of disputed issues.

INJURED EMPLOYEES

Section 37. Injured employees shall report injuries, no matter how slight, in writing to the foreman before leaving the office on the shift during which the injury occurred. Such report shall give the date of the injury, manner in which it occurred, and nature and apparent degree of injury.

HOLIDAYS

Section 38. Holidays, or the days legally observed as such, are as follows: New Year's Day, Washington's Birthday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day and Christmas. All work on such holidays (other than Saturday night) shall be paid for at double the regular hourly rate for not less than four hours; Provided, when the holiday falls on Saturday, seven hours shall constitute the night's work and shall be paid for at the regular rate. The Publishers shall not be required to pay wages for legal holidays unless work is actually performed.

VACATIONS

Section 39. (a) Any employe who has held a regular situation in the office of any one publisher during the entire twelve months immediately preceding May 1, 1951, or May 1 of any succeeding year and who has been continuously employed in such office for a period of five years prior to May 1 in the year the vacation is scheduled, shall be allowed and shall take during the succeeding twelve months a vacation of three consecutive weeks with pay for fifteen days. Any employe with less than five years employment who has held a regular situation in the office of any one publisher during the entire twelve months immediately preceding May 1, 1951, or May 1 of any succeeding year, shall be allowed and shall take, during the next succeeding twelve months, a vacation of two consecutive weeks with pay for ten days. All other employees hired by the office shall be allowed and shall take one day's vacation with pay for each twenty-five shifts or one major fraction thereof worked in any one office during the twelve consecutive months immediately preceding May 1, 1951, or May 1 of any succeeding year. Provided, however, that if any regular situation-holder actually works less than twenty-five shifts on his situation during any such twelve-month period, he shall be entitled to no vacation rights, and that the

employees who actually work on such situations during such period shall have the number of shifts so worked added to the number of shifts, if any, worked for the office during the same period, and shall be allowed and shall take one day's vacation with pay for each twenty-five such shifts worked in any one office during the twelve consecutive months preceding May 1, 1951, or May 1 of any succeeding year during the life of this contract.

(b) The amount to be paid an employee on vacation shall be determined as follows:

1. An employee who is allowed to take, and does take either two or three weeks vacation with pay under (a) above and who holds a regular situation at the beginning of his vacation period shall be paid an amount equal to two or three times the total, as the case may be, of (1) the straight-time wages, (2) the penalty for an early starting time or times, if any, and (3) the premium pay, if any, fixed by the Publisher, each as applicable to the five seven-hour shifts he was scheduled to work during the latest payroll week which ended prior to the beginning of his vacation period.

2. An employee who is allowed to take and does take two weeks' vacation with pay under (a) above and who does not hold a regular situation at the beginning
15 of his vacation period shall be paid an amount equal to twice the total of (1) the straight-time wages, (2) the penalty for early starting time or times, if any, and (3) the premium pay, if any, fixed by the Publisher, each as applicable to the five seven-hour shifts he was scheduled to work during the latest payroll week in which he held a regular situation.

3. An employee who is allowed to take and does take less than two weeks' vacation with pay under (a) above and who holds a regular situation at the beginning of his vacation period shall be paid for each day of his vacation an amount equal to the total of (1) the straight-time

wages, (2) the penalty for early starting time, if any, and (3) the premium pay, if any, fixed by the Publisher, each as applicable to the shift of seven hours which he was scheduled to work on the corresponding day of the latest payroll week which ended prior to the beginning of his vacation period.

4. An employee who is allowed to take and does take less than two (2) weeks' vacation with pay under (a) above and who does not hold a regular situation at the beginning of his vacation period, shall be paid an amount equal to the total of (1) the straight-time wages, (2) the penalty for early starting time, if any, and (3) the premium pay, if any, fixed by the Publisher, each as applicable to the latest seven-hour shift worked by him on office hire prior to the close of the latest payroll week ended prior to the beginning of his vacation period, times the number of day's vacation allowable in his case.

(c) Except as provided in Paragraph (a), no employee shall be allowed vacation on account of time worked as a substitute for another employee and, therefore, in determining the number of days of vacation to be allowed an employee, all time worked by him as a substitute for any other employee shall be disregarded. It is agreed that the spirit and purpose of this provision is to disallow duplication of vacation credits on the same situation.

(d) The Publishers may schedule vacations to conform to the operating requirements of their respective composing rooms. Insofar as the operating requirements of the office will permit, such vacation periods shall be scheduled between May 1 and October 31. Choice of scheduled vacation periods shall be allowed an employee according to his priority order within the above-mentioned schedule for his shift.

(e) No employee allowed vacation under this section shall put on a substitute for any part of his vacation period,

nor shall the Publishers be required to hire men to replace employes on vacation.

(f) Any employe of six months or more of service who leaves his place of employment, voluntarily or otherwise, shall be entitled to and receive his vacation credit pay on a pro rata basis. Such credits shall be paid upon the request of such employes at the beginning of the next succeeding vacation period (May 1); Provided, the provisions of this section shall not apply in the case of an employe whose employment is terminated by death prior to taking all or any part of his vacation.

(g) Vacation pay shall be paid the employe not later than the day preceding the day beginning his vacation.

APPRENTICES

Section 40. (a) A Joint Apprentice Committee consisting of two representatives of the Union and two representatives of the Publishers shall be formed to pass upon all applications for apprenticeship, and shall exercise all of the specific powers and authority granted to it under and in accordance with the provisions of this section. In the event the four members of the Joint Apprentice Committee cannot mutually agree, the controversy shall be referred to the Joint Standing Committee under and in accordance with the provisions of Section 6 of this contract.

16 (b) Apprentices employed by the Publishers shall be selected by the Joint Apprentice Committee from a list of apprentice applicants prepared by the Committee. Said list of applicants shall be kept in duplicate, one copy to be in the office of the Union and the other copy in the office of the Publishers Association. All applicants shall be given an aptitude test under the supervision of the Joint Apprentice Committee before being placed on said list.

(c) In newspaper offices printer apprentices may be employed in the ratio of one to every fifteen journeymen or major fraction thereof and the ratio is to be observed at all time; Provided, that each office shall be entitled to a minimum of four apprentices.

(d) Apprentices shall serve six years at the trade, provided the term is not reduced as hereinafter provided for, and at the end of that time, if competent and meeting the requirements specified in this section, shall be eligible to work as journeymen. They shall be given every opportunity to learn the trade, but shall not be in charge of any class of work or be employed to operate typesetting or linecasting machines except as hereinafter provided for in Paragraph (g) to (i) inclusive. All production of apprentices may be used by the office. The first year of apprenticeship shall be considered one of probation, such probationer to be possessed of the following qualifications: (1) not under 18 years of age; (2) possessed of a certificate of graduation from a junior high school or its equivalent; (3) in good health and sound physically, as certified by a reputable physician.

(e) Should an apprentice be careless or neglectful of the duties required by those in control of his trade training, his case shall be investigated by the Joint Apprentice Committee for such action as it deems advisable even to the extent of stopping his wage increase or of revoking his registration.

(f) The advancement of an apprentice shall be dependent on the apprentice's qualifications and educational progress. If the foreman and chairman cannot mutually agree as to the qualifications of the apprentice to be advanced into the next period, the matter shall be referred to the Joint Apprentice Committee whose duty it shall be to inquire into the qualifications of said apprentice to ascertain if he meets the necessary requirements called for in the several classes of work specified for each year of

his apprenticeship, after which the Joint Apprentice Committee shall report its findings to the foreman and to the chairman for action.

(g) Work of Apprentices: The portions of an apprentice's time devoted to work in the various branches of the trade during each year of his apprenticeship shall be apportioned under schedules prepared by the foreman and the chairman of the chapel of the office in which the apprentice is employed, subject to approval or revision by the action of the Joint Committee on Apprentices as follows:

1. In the first year an apprentice shall perform general work in the composing room at the discretion of the foreman. This general work shall consist of carrying copy and proofs, running proof press, holding copy, working in the ad room, on the bank, makeup and Ludlow. Provided, that no first year apprentice shall be permitted to work more than twenty-five percent (25%) of the time on any one of the above operations.

2. In the second year an apprentice shall be employed at least fifty percent (50%) of the time at straight hand composition and advertisement work and distribution. The remaining fifty percent (50%) of the time may be devoted to holding copy and work incident thereto.

3. In the third year an apprentice shall be employed at least seventy-five percent (75%) of the time on the same general character of hand composition and distribution as in the second year with the addition of marking up advertisements. The remaining twenty-five percent (25%) of the time may be devoted to holding copy and work incident thereto.

17 4. In the fourth year an apprentice shall be employed at least fifty percent (50%) of the time at hand composition, distribution and marking up advertisements. For the remaining fifty percent (50%) of the time he shall be employed on the makeup.

5. In the fifth year an apprentice shall be employed for the first six (6) months of the time on hand composition and marking up advertisements. For the next three (3) months of the time the apprentice shall be employed on the makeup. The last three (3) months of the fifth year the apprentice shall be employed at reading proof under the direct supervision of a journeyman proofreader.

6. In the sixth year an apprentice shall be employed for the first nine (9) months in the operation of whatever make of typesetting or linecasting machine that may be a part of the office equipment for the setting of news matter, classified and news agate type. For the last three (3) months of the sixth year an apprentice shall be employed on the ad machines exclusively.

(h) The foregoing limitation on the time spent by apprentices in any branch of the trade during each year of apprenticeship may be varied by mutual agreement between the foreman and the chairman, or on the recommendation of either, with the approval of the Joint Apprentice Committee. Such decisions shall be based upon the capabilities of individual apprentices and the necessity for affording them the broadest possible training and experience in the work of a printer.

(i) Upon the joint recommendation of the foreman and the chairman, or on the recommendation of either, with the approval of the Joint Apprentice Committee, and the consent of the Publisher involved and the President of the International Typographical Union, an apprentice may be upgraded when he has shown he has applied himself to his work and studies sufficiently to warrant advancement.

(j) Machinists apprentices may be employed in each composing room in the ratio of one to each four machinists regularly employed; Provided, that each office may have at least one machinist apprentice. They shall be given every opportunity to learn the trade and shall be under the supervision of a journeyman machinist at all

times. At least three months of the sixth year shall be devoted to learning the operation of monotype and other material-casting machinery. Such apprentices shall not be included in the allotment of apprentices otherwise provided for and shall be governed as to wages, hours and terms of apprenticeship provided for other apprentices. Provided, the total number of apprentices, including machinists apprentices, in the same office shall not exceed the total number of apprentices which may be allowed in the same office under Sections 20 and 21 of Article I of the General Laws of the International Typographical Union of 1951.

(k) No apprentice shall leave one office and enter that of another employer without the prior consent of the Joint Apprentice Committee

(l) The minimum scale of wages to be paid apprentices shall bear the following proportions to the full scale of the shift on which they are employed:

Year		Day Shift		Night Shift	
		Hour	Week	Hour	Week
1st	(45%)	\$1.2536	\$43.88	\$1.3178	\$46.13
2d	(55%)	1.5321	53.63	1.6107	56.38
3d	(65%)	1.8107	63.38	1.9035	66.63
4th	(75%)	2.0893	73.13	2.1964	76.88
5th	(85%)	2.3678	82.88	2.4892	87.13
6th	(90%)	2.5071	87.75	2.6357	92.25

Effective January 1, 1952, the minimum scale of wages to be paid apprentices shall bear the following proportions to the full scale of the shift on which they are employed:

18

Year		Day Shift		Night Shift	
		Hour	Week	Hour	Week
1st	(45%)	\$1.2728	\$44.55	\$1.3371	\$46.80
2d	(55%)	1.5557	54.45	1.6342	57.20
3d	(65%)	1.8385	64.35	1.9314	67.60
4th	(75%)	2.1214	74.25	2.2285	78.00
5th	(85%)	2.4042	84.15	2.5257	88.40
6th	(90%)	2.5457	89.10	2.6742	93.60

(m) The hours of labor for apprentices shall be the same as those for journeymen, all overtime to be paid for at one and a half times the regular hourly rate; Provided, that no apprentice shall work more than three (3) hours' overtime in any one week, nor more than one hour in any one shift.

(n) Apprentices shall be allowed the same number of days vacation as provided for journeymen under Section 39, and vacation pay for apprentices shall be computed based on the scale as provided in Paragraph (l) above.

Section 41. The parties hereto agree that they have fully bargained with respect to wages, hours, and other terms and conditions of employment and have settled the same for the term of this agreement in accordance with the terms hereof.

Section 42. The International Typographical Union is not a party hereto and it is agreed that approval of this agreement by the International Typographical Union does not make it a party.

Section 43. It is the intention and the desire of the parties hereto that no strike or other interruption of normal employment or production shall occur during the life of this agreement. To this end the Union and the Publishers commit themselves to the orderly settlement of disputes as provided herein. However, Columbia Typographical

Union No. 101, reserves to itself the right to direct its members to support a strike of this Union or of Washington Mailers' Union, No. 29, against any Publisher or Publishers signatory hereto, which strike has been authorized under the laws of the I.T.U. Should such support or should unauthorized work stoppages by members of Columbia Typographical Union, No. 101, result in substantial curtailment of composing room operations, the Publisher or Publishers thereby affected reserve the right to be relieved of the prohibition against the use of substitute processes or operations as provided in Section 7 hereof during the period in which such support is granted or such substantial curtailment of operations continues. Upon resumption of normal operations, use of substitute processes or operations shall be discontinued.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 12th day of June, 1951.

FOR COLUMBIA TYPOGRAPHICAL UNION, No. 101:

John R. Evans, Vice-President

Joseph Z. Lins, Sec.-Treas.

FOR WASHINGTON PUBLISHERS ASSOCIATION:

E. M. Johannes

Washington Daily News Company, Inc.

Wm. W. Rodgers

Washington Times-Herald, Inc.

S. H. Kauffmann

The Evening Star Newspaper Company

G. S. Phillips

The Washington Post Company

19 In order to comply with International Typographical Union laws and procedure only, and without affecting the rights of the employer, this agreement is approved as being in compliance with the laws of the Inter-

national Typographical Union as limited by the Taft-Hartley Law, and the undersigned, on behalf of the Executive Council of the International Typographical Union, hereby pledges, as a matter of union policy only, its full authority under its laws to the fulfillment thereof without becoming party thereto and without assuming any contractual liability as a party.

WOODRUFF RANDOLPH,
*President, International Typo-
graphical Union*

20

Filed June 14, 1954

Exhibit B**ARBITRATION DECISION**

IN THE MATTER OF ARBITRATION

between

WASHINGTON PUBLISHERS ASSOCIATION

and

COLUMBIA TYPOGRAPHICAL UNION, No. 101

Re:

DISCIPLINARY ACTION TAKEN BY THE UNION AGAINST
S. K. TRUNNELL, FOREMAN, EVENING STAR COMPOSING
ROOM

November 16, 1951

21 This matter is before the Joint Standing Committee, with the undersigned as the fifth member thereof, pursuant to the provisions of Section 6 of the Contract effective May 1, 1951, between the Washington Publishers Association and Columbia Typographical Union No. 101.

The question to be decided by the Joint Standing Committee, by stipulation between the parties, is stated as follows:

"Was the disciplinary action taken by the Union against S. K. Trunnell, foreman of the Star, on the basis of action taken on its Executive Committee Report attached hereto, in violation of Section 20 (a) of the contract between the parties, which reads:

'Section 20. (a) The operation, authority and control of each composing room shall be vested exclusively in the office through its representative, the foreman, who shall be a member of the Union. No foreman shall be subject to fine, discipline or expulsion by the Union for any act in the performance of his duties as foreman which such action is authorized by this agreement.'

"That the Chairman of the Joint Standing Committee shall not decide whether the Union may or may not discipline a foreman for actions not authorized by the agreement between the parties."

It appears that the Columbia Typographical Union, No. 101 (hereinafter referred to as the Union) at a regular meeting held on Sunday, June 17, 1951, approved the recommendations of its Executive Committee, which had recommended the assessment of a fine of one day's pay against S. K. Trunnell "as an admonition."

Mr. Trunnell is the foreman in charge of the composing room of the Star. By the terms of Section 20 of the contract between the parties, the foreman is required to be a member of the Union. The foreman is the representative of management in the composing room. As a member of the Union he is also under a duty (Article 18, Sec. 6, By-Laws of the Union) "to enforce the rules of the chapel and the laws of the local Union and International Typographical Union when violation thereof is reported by the chairman, and in case of his failure so to do he shall be liable

to a fine of not less than \$5 nor more than \$25, or suspension or expulsion, as the Union may determine.”

The recommendation of the Executive Committee of the Union, subsequently approved by the Union, that Mr. Trunnell be fined “as an admonition” followed the presentation of certain charges against Mr. Trunnell by Robert Taub, Chairman, Evening Star Chapel. The charges numbered thirteen. Mr. Taub’s complaint is quoted below, together with the decision and recommendation of the Executive Committee of the Union that heard the charges and testimony relating thereto:

“I hereby request the Executive Committee to sit in judgment as a Discipline Committee and bring before you Mr. S. K. Trunnell, foreman of the Evening Star Composing Room, for continually trying to initiate non-union conditions, violating contract provisions and local law, disrupting harmonious relation with the Management.

22 “1. During the 1949 newspaper scale negotiations, the Evening Star Co. set up a room for the varitype process. Foreman Trunnell ordered ten (10 forms of solid base to be locked up and ready for the plates to be placed on them for printing. This was done without the knowledge of the Chairman, who discovered them, ordering the forms to be broken up.

“2. February, 1951. No revising ads; ordering members to read lines and paragraphs of type corrections from type (no proof), and wanting to hold members responsible for errors.

“3. February, 1951. Reprimanding members who, at the time, were giving instructions to an apprentice.

“4. March, 1951. Wanted Chairman to do Chapel duties on own time.

“5. Intimidated a member—trying to force him to retire.

"6. Continually allowing the encroachment of jurisdiction by other departments; the advertisement production man and others giving orders to our members.

"7. March, 1951. Wanted to allow a man from another department to sit in Composing Room to screen copy—putting burden of giving answer to the Publisher's representative on the Chairman; thereby causing bad feeling between members of Union and management.

"8. April, 1951. Discharging a member without proper notice or duping.

"9. May, 1951. Continually duping members, giving an excuse of just measuring the inches of type set for the day.

"10. Allowing live ads on galleys and other type to be handled and moved by laborers and men from other departments on Sunday, May 6, and again Sunday, May 13, when Composing Room force was off.

"11. May, 1951. Refusing to abide by the Newspaper Contract, Section C, Page 4. Foreman Trunnell gave notice to the Chairman of a new interpretation of the vacation clause on members who received situations after May 1 of each year. This new interpretation is a change in practice and a change in conditions of the vacation clause since 1940. Chairman notified the Foreman that conditions and practice must remain status quo until a case is made and decided. Foreman Trunnell refused to comply with that section of the Contract.

"12. March, 1951. Threatened to prefer charges against Chapel officers because Foreman Trunnell was approached to correct discriminatory transfers.

"13. Continually abusing the local law, Section 6, page 63.

"The conduct and non-union tactics of S. K. Trunnell, Foreman, has caused the morale of the men in the Composing Room to reach an all-time low.

23 "For the reasons above I ask that the Executive Committee take action immediately."

REPORT OF EXECUTIVE COMMITTEE.

"It is the opinion of the Executive Committee that herein the goodwill of the management of the Evening Star stands indicted. In the performance of acts inimical to its friendly relationship with No. 101, the Evening Star's agent, Mr. Trunnell, must have acted with management's advice and approval.

"Further, it is the opinion of the Executive Committee that Mr. Trunnell, in each allegation, acted in such manner as to breach the ethics—if not the law—of the International Typographical Union.

"The Executive Committee finds:

"1. That Mr. Trunnell's admitted violations of local law, particularly Art. XVIII, Sec. 6, are inexcusable;

"2. That Mr. Trunnell's interpretation of contract and failure to abide the procedures therein are detrimental to the best interests of No. 101. In this regard the Executive Committee orders S. K. Trunnell, foreman of the Evening Star, to continue the status quo conditions and practices that have been enforced in the past until such time as they are changed either by contract or joint board decisions;

"3. That Mr. Trunnell's tedious explanations of ethical considerations were conspicuously lacking in trade-union philosophy.

"Therefore the Executive Committee recommends to Columbia Typographical Union the assessment of a fine of one day's pay as an admonition. Columbia Union cannot

countenance continuance of such reprehensible conduct. A second offense should result in a salutary action under International Law, Art. IV, 'Charges and Trials.' "

The undersigned notes that in the report or opinion of the Executive Committee no specific findings relating to each of the charges have been made. At the hearing held by the Joint Standing Committee, with the undersigned in attendance, on October 9, 1951, Mr. John R. Evans, Chairman of the Executive Committee of the Union, and its Vice President, stated that Mr. Trunnell was disciplined because of a "breach of ethics." Mr. Alfred E. Saki, a member of the Executive Committee, amplified this somewhat and stated that Mr. Trunnell was disciplined because

1. Mr. Trunnell attempted to coerce an employee to retire.

2. Mr. Trunnell attempted to change vacation practices.

3. Mr. Trunnell indulged in an unnecessary display of temper, threatening the Chairman with charges for complaining.

24 Of course, under the stipulation entered into, the undersigned as Chairman of the Joint Standing Committee is not called upon to decide whether the Union may or may not discipline a foreman for actions not authorized by the agreement between the parties. No such decision will be made. However, the undersigned Chairman notes that none of the charges made by Mr. Taub, Chapel Chairman, were ever referred to the Joint Standing Committee pursuant to the provisions of Section 6 of the contract between the parties.

Section 6 of the contract between the parties provides that there shall be referred to the Joint Standing Committee any controversies involving interpretation or application of the agreement (including controversies over discharge) which cannot be otherwise settled after reasonable effort. The contract recognizes that the Joint Stand-

ing Committee is established for the settlement of such disputes and that the Committee is the proper body to take up such disputes and settle them in the manner provided in the contract.

All the charges made by Mr. Taub appear to involve actions by Mr. Trunnell in performing his obligations and duties, express or implied, as foreman and representative of management in the operation of the composing room. Further, the charges appear to have been of the kind and character that might properly have been presented to the Joint Standing Committee.

Accordingly the undersigned Chairman joins with Messrs. William W. Rodgers and Peyton Evans, in holding that the disciplinary action taken by the Union against S. K. Trunnell, foreman of the Star, on the basis of action taken on its Executive Committee Report, is in violation of Section 20 (a) of the contract between the parties.

Respectfully submitted,

S/ FRED J. EDEN
Chairman

Dated: November 16, 1951

25

Filed July 28, 1954

**Answer and Counterclaim for Specific Performance of an
Agreement to Arbitrate**

ANSWER

1. The defendant admits the allegations of Paragraphs 1, 2, 3, 4, 5, and 6 of the complaint.
2. Defendant denies the allegations of Paragraphs 7, 8, and 9 of the complaint.

COUNTERCLAIM

1. The defendant states that after negotiations between them, the plaintiff and the defendant agreed that the claim herein asserted by the plaintiff should be submitted to arbitration. A copy of this agreement, dated March 30, 1954, is attached hereto, marked "Exhibit A", and made a part hereof.

2. By letter dated April 20, 1954, the plaintiff failed and refused to fulfill the agreement to arbitrate. A copy of that letter is attached hereto, marked "Exhibit B" and made a part hereof.

3. Under the agreement between the parties dated June 12, 1951, made a part of the complaint herein as Exhibit A, the plaintiff was under a duty to submit this controversy to arbitration. It has refused to do so, as shown by its letter of April 20, 1954.

4. The defendant has no adequate remedy at law in that:

26 a. The agreement between the parties provides a speedy method for the resolution of disputes, by a panel of persons expert in the problems of the industry, on which the defendant Union is entitled to be represented. This machinery for the settlement of disputes is traditional and customary in the industry and represents the culmination of many years' experience in labor-management relations and collective bargaining.

 b. The defendant Union negotiates agreements, such as the present agreement with the plaintiff, as the representative of its members and for their benefit. The machinery for the settlement of disputes therein provided is an essential consideration for the entire agreement which is, among other things, designed to give the defendant Union a voice in the settlement of disputes in order to foster and preserve good labor-management relations and orderly collective bargaining.

c. The machinery for the settlement of disputes under such agreements, including that with the plaintiff, is an essential part of the administration of the agreement and is an extension of the entire process of collective bargaining. Unless such agreements are honored, the defendant Union is, or may be, deprived of its voice in the settlement of such disputes, is deprived of its right of representation on the tribunal constituted to hear and decide them. loses prestige with its members and others, is handicapped in the administration of its agreements and is frustrated in carrying out its obligation to represent its members in its dealings with the plaintiff.

d. The defendant Union is entitled to enforcement of the agreement made with the plaintiff according to its terms, including the machinery for the settlement of controversies therein provided.

27 Wherefore the defendant prays that under the jurisdiction granted by Section 301 of the Labor Management Relations Act, the plaintiff be required to fulfill its duty to arbitrate the claim herein asserted, pursuant to the agreement of June 12, 1951 and the further agreement of March 30, 1954, that this Court enter an order directing specific performance of the aforesaid agreements to arbitrate, and grant such other and further relief as may be appropriate.

Respectfully submitted,

VAN ARKEL AND KAISER
1830 Jefferson Place, N. W.
Washington 6, D. C.

By: GERHARD P. VAN ARKEL
Gerhard P. Van Arkel
Attorney for Defendant

28

Filed July 28, 1954

Exhibit A

March 30, 1954

Mr. Fred J. Eden
Century Building
412 Fifth Street, N. W.
Washington 1, D. C.

Dear Mr. Eden:

In making its November 16, 1951 decision, in the matter of arbitration between Washington Publishers Association and Columbia Typographical Union, Local No. 101, with respect to the disciplinary action taken by the Union against S. K. Trunnell, Foreman, Evening Star Composing Room, the Joint Committee stated:

Of course, under the stipulation entered into, the undersigned as Chairman of the Joint Standing Committee is not called upon to decide whether the Union may or may not discipline a foreman for actions not authorized by the agreement between the parties. No such decision will be made. However, the undersigned Chairman notes that none of the charges made by Mr. Taub, Chapel Chairman, were ever referred to the Joint Standing Committee pursuant to the provisions of Section 6 of the contract between the parties.

Section 6 of the contract between the parties provides that there shall be referred to the Joint Standing Committee any controversies involving interpretation or application of the agreement (including controversies over discharge) which cannot be otherwise settled after reasonable effort. The contract recognizes that the Joint Standing Committee is established for the settlement of such disputes and that the Committee is the proper body to take up such disputes and settle them in the manner provided in the contract.

All of the charges made by Mr. Taub appear to involve actions by Mr. Trunnell in performing his obligations and duties, express or implied, as foreman and representative of management in the operation of the composing room. Further, the charges appear to have been of the kind and character that might properly have been presented to the Joint Standing Committee.

Accordingly, the undersigned Chairman joins with Messrs. William W. Rodgers and Peyton Evans, in holding that the disciplinary action taken by the Union against S. K. Trunnell, foreman of the Star, on the basis
 29 of action taken on its Executive Committee Report, is in violation of Section 20 (a) of the contract between the parties.

Was it the intention of the Joint Standing Committee in making that decision to require Columbia Typographical Union, Local No. 101, to refund to S. K. Trunnell the fine he had paid?

Very truly yours,

S-WILLIAM B. JONES,
*Attorney for the Evening Star
 Newspaper Company*

GERHARD P. VAN ARKEL,
*Attorney for Columbia
 Typographical Union # 101*

30

Filed July 28, 1954

Exhibit B

April 20, 1954

Mr. Fred J. Eden
Century Building
412 Fifth Street, N. W.
Washington 1, D. C.

Dear Mr. Eden:

Under date of March 30, 1954 Mr. Gerhard P. Van Arkel, attorney for Columbia Typographical Union No. 101 and I, as attorney for The Evening Star Newspaper Company, addressed a letter to you in which we referred to the November 16, 1951 decision in the matter of arbitration between Washington Publishers Association and Columbia Typographical Union, Local No. 101, with respect to the disciplinary action taken by the Union against S. K. Trunnell, Foreman, Evening Star Composing Room.

Our joint letter quoted from that decision at considerable length and then asked whether it was the intention of the Joint Standing Committee in making that decision to require the Union to refund to Trunnell the fine he had paid. Since sending that letter to you Mr. Van Arkel and I have engaged in discussions concerning the manner in which you should give consideration to the question posed by us. You have received a copy of a letter addressed to me by Mr. Van Arkel under date of April 8, 1954. In that letter you will observe that Mr. Van Arkel is of the view that briefs should be filed by the parties in this matter. It has been the contention of the Evening Star that this matter does not require the filing of briefs since the question of your intention in 1951 does not lend itself to briefing by the parties.

Mr. Van Arkel and I have not been able to have a meeting of the minds in this matter and I am therefore, on behalf of The Evening Star Newspaper Company, at this time withdrawing the Company's request to you to state the intention of the Joint Standing Committee in making its 1951 decision.

Very truly yours,

S-WILLIAM B. JONES

WBJ/glb

cc: Mr. Van Arkel

31

Filed August 16, 1954

Motion to Dismiss for Lack of Jurisdiction

The plaintiff, by its attorneys, moves to dismiss defendant's counterclaim for the reason that court lacks jurisdiction over the subject matter.

HAMILTON and HAMILTON

By WM. B. JONES

Attorneys for Plaintiff

33

Filed October 21, 1954

Order

Upon consideration of the plaintiff's motion to dismiss the defendant's counterclaim for the reason that the Court lacks jurisdiction over the subject matter, and having heard oral argument thereon, it is, by the Court, this 21st day of October, 1954

ORDERED that the said motion to dismiss be and the same is hereby denied.

ALEXANDER HOLTZOFF
Judge

Seen:

HAMILTON and HAMILTON
By WM. B. JONES
Attorneys for Plaintiff

34

Filed November 24, 1954

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2545-54

THE EVENING STAR NEWSPAPER Co.

v.

COLUMBIA TYPOGRAPHICAL UNION No. 101

Civil Action No. 3301-54

HOWARD D. FRITZ ET AL.

v.

THE EVENING STAR NEWSPAPER Co.

Opinion

William B. Jones, Esq., of Washington, D. C., for the motion.

Gerhard P. Van Arkel, Esq., of Washington, D. C., opposed.

In the first of these actions, the defendant interposed a counterclaim seeking enforcement of an arbitration clause in a collective bargaining agreement. The second action seeks the same relief in behalf of an employee and the

labor union. The matter comes up on motions to dismiss. The only question presented to the Court for determination on these motions is whether an action lies for
 35 the specific performance of an arbitration clause in a collective bargaining agreement under United States Code, Title 29, Section 185, which is also sometimes referred to as Section 101 of the Taft-Hartley Act. That section provides that:

“Suits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.”

Counsel urge in support of the motions to dismiss that this provision should be limited to suits for money damages. On its face the unambiguous language of the Act would lead to the contrary conclusion.

Judge Wyzanski, of the United States District Court for the District of Massachusetts, in *Textile Workers Union v. American Thread Co.*, 113 F. Supp. 137, in a detailed and well considered opinion, reached the conclusion that under this section the Federal courts may specifically enforce arbitration clauses in labor contracts. There is no decision to the contrary.

The cases on which the moving party relies involved actions for injunctive relief, in contravention of the
 36 Norris-La Guardia Act, and are, therefore distinguishable.

The Court is in accord with the views expressed by Judge Wyzanski¹ and, therefore, is of the opinion that a claim for specific performance may be asserted by the Columbia Typographical Union. On the other hand, an

¹ After the decision of the case at bar, an opinion of Judge Follmer in the Middle District of Pennsylvania reaching the same result appeared in the advance sheets, *Insurance Agents' International Union v. Prudential Ins. Co.*, 122 F. Supp. 869.

action by the individual may not be maintained under the Taft-Hartley Act. Consequently the Court will deny the motion as concerns the claims of the Columbia Typographical Union and will grant the motion as to the claim of Plaintiff Fritz.

You may submit your orders.

ALEXANDER HOLTZOFF
United States District Judge

October 6, 1954.

37

Filed November 30, 1954

Plaintiff's Reply to Counterclaim

The plaintiff Evening Star Newspaper Company, by its attorneys, in reply to the counterclaim filed in the above entitled action, alleges:

FIRST DEFENSE

The counterclaim fails to state a claim against plaintiff upon which relief can be granted.

SECOND DEFENSE

The plaintiff, for its second defense, answers the numbered paragraphs of the counterclaim as follows:

1. Plaintiff denies the allegations of paragraphs 1, 2, 3 and 4 of the counterclaim.

Further replying to the counterclaim, plaintiff alleges that, in an effort to settle the claim it has alleged in its complaint filed in this action, its representatives met with representatives of defendant on September 15, 1953. At that meeting defendant offered to pay the \$40.00 involved to a charity, or alternatively to return the controversy to

the Joint Standing Committee with a request that that Committee's decision that the defendant had violated the effective agreement (all of which is more particularly referred to in the complaint filed herein) be clarified as to whether it was the Committee's intention that the \$40.00 illegal fine be repaid to S. K. Trunnell. In an effort to dispose of this matter plaintiff agreed to defendant's latter proposal and thereafter counsel for the plaintiff and defendant addressed a letter, dated March 30, 1953, (Exhibit A attached to defendant's counterclaim) to Fred J. Eden, the fifth member of the Joint Committee, requesting such a clarification of the Committee's intention. Thereafter defendant proposed to enlarge the scope of the Joint Committee's consideration by presenting new matter to it as is evidenced by correspondence between counsel for defendant and counsel for plaintiff dated April 2, 1954, April 7, 1954 and April 8, 1954, copies of which are attached hereto, made parts hereof and marked Exhibits 1, 2 and 3 respectively. As a result of that change in defendant's position, counsel for plaintiff sent a letter dated April 20, 1954, withdrawing plaintiff's request for a statement of the intention of the Joint Committee in making its November 16, 1951 decision as to the repayment of the \$40.00 to Trunnell. A copy of the April 20, 1954 letter is attached hereto, made a part hereof and marked Exhibit 4.

2. Plaintiff denies that defendant is entitled to the relief claimed or any judgment or decree in its favor.

WHEREFORE, the premises considered, plaintiff prays that the counterclaim be dismissed with costs.

HAMILTON and HAMILTON

By WM. B. JONES

Attorneys for Plaintiff

39

Filed November 30, 1954

Exhibit 1

April 2, 1954

Mr. William B. Jones
Hamilton and Hamilton
Union Trust Building
Washington 5, D. C.

Re: S. K. Trunnell Matter

Dear Bill:

Contrary to the statement in your covering letter, I note that you had not signed the enclosed and am therefore returning it to you. Could you let me have one copy for my file?

Should we not say something to Eden about further proceedings? There are some matters not of record which we will want to put before him and you may have some. I'd be glad to try and work this out by stipulation if that seems desirable, though I suppose the quickest would be to put on a witness or two. And I suppose that you, like us, will want to file a brief on the question.

Very truly yours,

/s/ GERRY

GERHARD P. VAN ARKEL

40

Filed November 30, 1954

Exhibit 2

April 7, 1954

Mr. Gerhard P. Van Arkel
1830 Jefferson Place, N. W.
Washington 6, D. C.

Re: S. K. Trunnell Matter

Dear Gerry:

Pardon my oversight for not having signed the letter for Fred J. Eden. I have now done so and have mailed it to him. I enclose a copy for your file. I had intended for you to have the copy that you returned. The copy that I am enclosing has been signed by me.

I thought that all we were going to do was ask Eden to advise us of what his intentions were when he made the 1951 decision. My memorandum, prepared after the September 15, 1953 meeting at Crosby Boyd's office at the Evening Star, indicates that you had made two proposals, viz:

1. That the controversy be returned to the arbitrators with the request that the award be clarified as to whether it was intended that the \$40.00 be repaid to Trunnell or, alternatively.

2. That the Union give to a charity the \$40.00 which would avoid the returning of the question to the arbitrators.

It seems to me if we attempt to put any new matter into the record we can hardly ask Eden to consider that matter and at the same time state what he intended when he made his 1951 award on the record then before him.

And even without submitting new matter I had not intended to file a brief since I thought it would be simply a

matter more the Board to review in light of its own decision.

I would be pleased if you would advise me further as to what you have in mind, both as to new matter and as to briefing the Board.,

Best regards.

Sincerely yours,
/s/ Wm. B. JONES

41

November 30, 1954

Exhibit 3

April 8, 1954

Mr. William B. Jones
Hamilton and Hamilton
Union Trust Building
Washington 5, D. C.

Re: S. K. Trunnell Matter

Dear Bill:

In reply to your letter of April 7, I would suggest that we ask Mr. Eden to set a date within which briefs might be received from the parties in this matter. I know of no matters which would require the production of witnesses and it is my view that the matters we wish to bring to the attention of the Joint Standing Committee can be handled by the filing of briefs. I do feel that the Joint Standing Committee would be assisted if the contentions of the parties were accurately placed before them.

Sincerely yours,

/s/ GERRY
GERHARD P. VAN ARKEL

cc: Mr. Jesse B. Manbeck
cc: Mr. Fred J. Eden

42

Filed November 30, 1954

Exhibit 4

April 20, 1954

Mr. Fred J. Eden
Century Building
412 Fifth Street, N. W.
Washington 1, D. C.

Dear Mr. Eden:

Under date of March 30, 1954 Mr. Gerhard P. Van Arkel, attorney for Columbia Typographical Union, No. 101, and I, as attorney for The Evening Star Newspaper Company, addressed a letter to you in which we referred to the November 16, 1951 decision in the matter of arbitration between Washington Publishers Association and Columbia Typographical Union, Local No. 101, with respect to the disciplinary action taken by the Union against S. K. Trunnell, Foreman, Evening Star Composing Room.

Our joint letter quoted from that decision at considerable length and then asked whether it was the intention of the Joint Standing Committee in making that decision to require the Union to refund to Trunnell the fine he had paid. Since sending that letter to you Mr. Van Arkel and I have engaged in discussions concerning the manner in which you should give consideration to the question posed by us. You have received a copy of a letter addressed to me by Mr. Van Arkel under date of April 8, 1954. In that letter you will observe that Mr. Van Arkel is of the view that briefs should be filed by the parties in this matter. It has been the contention of the Evening Star that this matter does not require the filing of briefs since the question of your intention in 1951 does not lend itself to briefing by the parties.

Mr. Van Arkel and I have not been able to have a meeting of the minds in this matter and I am therefore, on behalf of The Evening Star Newspaper Company, at this

time withdrawing the Company's request to you to state the intention of the Joint Standing Committee in making its 1951 decision.

Very truly yours,

/s/ Wm. B. JONES

cc: Mr. Van Arkel

43

Filed December 15, 1954

Defendant's Motion for Summary Judgment

The defendant herein, by its attorneys, moves the Court for summary judgment in the above-entitled cause, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for the reason that:

1. The pleadings show on their face that there was an agreement between the parties to arbitrate this dispute.

2. The pleadings show on their face that plaintiff has failed and refused to carry out this agreement.

3. It has previously been determined in this action that this Court has power to grant the defendant relief by ordering specific performance of the agreement to arbitrate, the relief prayed for by the defendant.

4. And for the reasons more fully set forth in the Memorandum of Points and Authorities filed herewith.

Respectfully submitted,

GERHARD P. VAN ARKEL

Gerhard P. Van Arkel

VAN ARKEL AND KAISER

Suite 601, 1701 K Street, N. W.

Washington 6, D. C.

Attorneys for Defendant

Date: December 15, 1954

Filed January 27, 1955

Plaintiff's Requests for Admissions Under Rule 36

Plaintiff, pursuant to Rule 36, F.R.C.P., requests defendant, within 10 days after service of this request, to make the following admissions for the purpose of this action only:

1. That it is true that the disciplinary action taken on June 17, 1951 by the defendant Union against S. K. Trunnell, at that time plaintiff's composing room foreman, was the assessment of a \$40 fine.

2. That it is true that S. K. Trunnell paid that fine, under protest, to defendant Union.

3. That it is true that the amount of that fine has never been returned to S. K. Trunnell.

HAMILTON and HAMILTON

By WM. B. JONES

Attorneys for Plaintiff

Filed February 10, 1955

Order

Upon consideration of the defendant's motion for summary judgment, and having heard oral argument thereon, it is, by the Court, this 10th day of February, 1955

ORDERED that the said motion be and the same is hereby denied.

R. B. KEECH

Judge

Filed March 9, 1955

Reply to Request for Admission of Facts

Columbia Typographical Union No. 101, defendant in the above entitled action, makes the following statement in response to the request for admission of facts under Rule 36 served upon it on January 26, 1955:

1. It admits the truth of the matter set forth in Paragraph 1.
2. It denies the truth of the matter set forth in Paragraph 2.
3. It is true that the defendant has not paid any amount to S. K. Trunnell, nor has he made any request for such payment.

COLUMBIA TYPOGRAPHICAL UNION No. 101

By JESSE B. MANBECK
Jesse B. Manbeck
President

Subscribed and sworn to before me this 8th day of March, 1955.

MARION L. EVANS
Notary Public, D. C.

Filed June 3, 1955

Stipulation

It is stipulated by counsel for the parties herein that S. K. Trunnell paid to defendant the fine of \$40.00 assessed against him by defendant on June 17, 1951, which

assessment and fine are more particularly referred to in the complaint on file herein.

HAMILTON and HAMILTON
By WM. B. JONES
Attorneys for Plaintiff

VAN ARKEL and KAISER
By GERHARD VAN ARKEL
Attorneys for Defendant

May 31st, 1955

49

Filed June 6, 1955

Plaintiff's Motion for Summary Judgment

Plaintiff moves the court for a summary judgment for the reason that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law in this action.

HAMILTON and HAMILTON
By WM. B. JONES
Attorneys for Plaintiff

51

Filed June 6, 1955

Affidavit of Harold Boyd

DISTRICT OF COLUMBIA ss:

Harold Boyd, being duly sworn on oath, deposes and says:

I am the Assistant to the Business Manager of The Evening Star Newspaper Company. As Assistant to the Business Manager of The Evening Star Newspaper Company I have, among my duties, the matter of handling

personnel relations with the Company's employees. On June 25, 1951 The Evening Star Newspaper Company paid to S. K. Trunnell the sum of \$40.00 as reimbursement for the fine that was assessed against him and which he had paid Columbia Typographical Union, No. 101.

HAROLD BOYD

52

Filed September 3, 1955

Memorandum

In my opinion, there is no genuine issue as to any material fact, and the plaintiff's motion for summary judgment should be granted.

The facts which are disputed are not material.

The collective bargaining agreement between the parties provided a Code of Procedure for resolving controversies involving interpretation or application of the agreement.

The agreement also provided [Sec. 20(a)] that:

"No foreman shall be subject to fine, discipline or expulsion by the Union for any act in the performance of his duties as foreman when such act is authorized by this agreement."

The defendant assessed a fine of one day's pay against S. K. Trunnell who was the foreman in charge of plaintiff's composing room, and the plaintiff contended that this action was in violation of Sec. 20(a) as aforesaid.

The defendant demanded, and Trunnell paid, the fine amounting to \$40.00 to the defendant. I think it is immaterial as to whether or not the payment was made under protest.

53

The matter was taken to arbitration under the provisions of the Code of Procedure and the arbitration decision held "that the disciplinary action taken by the Union against S. K. Trunnell, foreman of the Star, on the basis of action taken on its Executive Committee Report, is in violation of Section 20(a) of the contract between the parties."

The Code of Procedure provides that the decision of the Joint Standing Committee "shall be final and binding".

In my opinion, the decision in this case is clear and unambiguous and does not require interpretation, and there is no occasion to arbitrate the meaning of the decision. The plaintiff was required to reimburse its foreman for the fine improperly levied against him as a result of the performance of his duties for the plaintiff. Therefore, the defendant is liable to the plaintiff for the payment made by plaintiff resulting from defendant's breach of the Agreement.

Accordingly, a judgment will be entered granting the prayers of the complaint.

Counsel for the plaintiff will submit an appropriate order.

JOSEPH C. MCGARRAGHY
Judge

September 3, 1955

54

Filed September 27, 1955

Order for Summary Judgment

This cause came on to be heard on motion by plaintiff for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the Court having considered the pleadings in the action, defendant's admis-

sions, stipulation of counsel, affidavits of Harold Boyd, and having heard oral argument; and the Court having found that there is no genuine issue as to any material fact and having concluded that the plaintiff is entitled to a judgment as a matter of law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that summary judgment be entered in favor of plaintiff for the sum of \$40.00 and its costs of action, and that plaintiff have execution therefore.

Dated September 27th, 1955.

JOSEPH C. MCGARRAGHY
District Judge

SEEN :

VAN ARKEL & KAISER

By GERHARD VAN ARKEL

Attorneys for Defendant

BRIEF FOR APPELLANT

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,984

COLUMBIA TYPOGRAPHICAL UNION, No. 101, *Appellant*.

v.

THE EVENING STAR NEWSPAPER COMPANY, *Appellee*.

Appeal from the United States District Court
for the District of Columbia

GERHARD P. VAN ARKEL

EUGENE GRESSMAN

Van Arkel and Kaiser

1701 K Street, N. W.

Washington 6, D. C.

Counsel for Appellant.



STATEMENT OF QUESTIONS PRESENTED

1. Whether the court below erred in summarily ordering the appellant union to pay \$40 to the appellee employer because of the latter's voluntary reimbursement of its foreman (a union member) for a \$40 fine assessed against him by the union, the assessment having been levied in a context of circumstances found by arbitrators to violate a collective bargaining agreement.
2. Whether the court below erred in failing to order the appellee employer to perform an agreement to submit to further arbitration the meaning and application of the arbitrators' determination.

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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,984

COLUMBIA TYPOGRAPHICAL UNION, No. 101, *Appellant*,

v.

THE EVENING STAR NEWSPAPER COMPANY, *Appellee*.

**Appeal from the United States District Court
for the District of Columbia**

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

Appellee (a newspaper corporation) filed a complaint in the District Court against the appellant (a labor organization) for a declaratory judgment and for damages for breach of contract. The complaint alleged that jurisdiction was conferred upon the District Court by Section 301 of the Labor Management Relations Act of 1947 (29 U.S.C.A. § 185) and the Federal Declaratory Judgment

Act, as amended (28 U.S.C.A. §§ 2201, 2202). Appellant also filed a counterclaim under Section 301 of the Labor Management Relations Act of 1947, seeking specific performance of an agreement to arbitrate. From the judgment of the District Court granting appellee's motion for summary judgment, appellant now appeals to this Court and invokes its jurisdiction under 28 U.S.C.A. § 1291.

STATEMENT OF THE CASE

Appellee is a newspaper corporation doing business in the District of Columbia, while the appellant is a labor organization representing appellee's employees employed in its composing room as machine men, hand men, floor men and proof readers (J.A. 2). The appellant at all pertinent times has been the exclusive bargaining representative of those employees (J.A. 2).

On June 12, 1951, the parties entered into an agreement covering wages and other conditions of employment (J.A. 6-34). During its effective period, which included all times pertinent to this proceeding, this agreement established and governed the rights and obligations of the parties with respect to appellee's composing room operations and the employees therein. Section 1(a) of the agreement provided (J.A. 7):

This agreement alone shall govern relations between the parties on all subjects concerning which any provision is made in this agreement, and any dispute involving any such subjects shall be determined in accordance with the local Code of Procedure set forth in Section 6 hereof.

Section 6(b) stated (J.A. 8) that to the arbitration board, known as the Joint Standing Committee, shall be referred

. . . any controversies involving interpretation or application of this agreement (including controversies over discharge) which cannot be otherwise settled after reasonable effort.

The parties further agreed in Section 6(i) that (J.A. 10),

In connection with any differences or disputes which may arise between the parties to this agreement during the life of this agreement, both parties agree that they will abide by all the provisions of this section and will not request or accept release from their commitment to arbitrate any dispute which may properly be settled by the Joint Standing Committee.

Section 20(a) of the agreement read (J.A. 17):

The operation, authority and control of each composing room shall be vested exclusively in the office (the newspaper company) through its representative, the foreman, who shall be a member of the Union. No foreman shall be subject to fine, discipline or expulsion by the Union for any act in the performance of his duties as foreman when such action is authorized by the agreement.

At all times relevant to this proceeding Mr. S. K. Trunnell was the foreman in charge of appellee's composing room and a member of the appellant union as he was required to be under the terms of the agreement (J.A. 3).

Certain charges against Mr. Trunnell were preferred by the chairman of the Evening Star Chapel of appellant union. These charges were thirteen in number (J.A. 36-37) and accused Trunnell generally of "continually trying to initiate non-union conditions, violating contract provisions and local law, disrupting harmonious relation with the management" (J.A. 36).

Sitting in judgment on these charges, the Executive Committee of the appellant union concluded (J.A. 38) that "Mr. Trunnell, in each allegation, acted in such manner as to breach the ethics—if not the law—of the International Typographical Union" and it accordingly recommended "the assessment of a fine of one day's pay as an admonition" (J.A. 38). On June 17, 1951, the appellant union at its regular monthly meeting approved

the conclusions and recommendations of its Executive Committee (J.A. 3, 35). As a result of this action, Mr. Trunnell was assessed a fine of \$40, representing one day's pay (J.A. 56-57). He paid this amount to the appellant union (J.A. 57-58). This amount was never returned to him and he never made any request for such a return (J.A. 57).

On June 18, 1951, a representative of the appellee wrote to the secretary of the appellant union protesting the assessment of the fine and the imposition of discipline on Mr. Trunnell (J.A. 4). This letter alleged that the fine and discipline were imposed because of acts performed by Mr. Trunnell as appellee's foreman and which were authorized by the agreement. The action of the appellant union was thus said to be in violation of Section 20(a) of the agreement. And a demand was made by appellee's representative that the controversy be promptly submitted to the Joint Standing Committee, as provided in Section 6 of the agreement, and that the conditions prevailing prior to the controversy be maintained until the matter was decided by the Committee (J.A. 4).

On June 25, 1951, the appellee "paid to S. K. Trunnell the sum of \$40.00 as reimbursement for the fine that was assessed against him and which he had paid Columbia Typographical Union, No. 101" (J.A. 58-59).

The matter was finally submitted to arbitration by the Joint Standing Committee. By stipulation between the parties, the question to be decided by the Committee was stated to be: "Was the disciplinary action taken by the Union against S. K. Trunnell, foreman of the Star, on the basis of action taken on its Executive Committee Report attached hereto, in violation of Section 20(a) of the contract between the parties." (J.A. 35).

On November 16, 1951, the Committee rendered its decision (J.A. 34-40). It held that "all of the charges . . . appear to involve actions by Mr. Trunnell in per-

forming his obligations and duties, *express or implied*, as foreman and representative of management in the operation of the composing room." (J.A. 40). Hence it was concluded (J.A. 40) "that the disciplinary action taken by the Union against S. K. Trunnell, foreman of the Star, on the basis of action taken on its Executive Committee Report, is in violation of Section 20(a) of the contract between the parties." No statement was made, however, as to whether the appellant union was required to refund the \$40 fine to Mr. Trunnell or to reimburse the appellee newspaper company for that amount.

Subsequently a dispute arose between the parties as to the obligation of the appellant union, under the 1951 arbitration decision of the Joint Standing Committee, to refund the \$40 fine that had been imposed upon and paid by Mr. Trunnell. At a meeting of the parties on September 15, 1953, the appellant union offered to pay the \$40 involved to a charity or, alternatively, "to return the controversy to the Joint Standing Committee with a request that that Committee's decision that the defendant (appellant) had violated the effective agreement . . . be clarified as to whether it was the Committee's intention that the \$40.00 illegal fine be repaid to S. K. Trunnell" (J.A. 49-50). In appellee's own words, "In an effort to dispose of this matter plaintiff (appellee) agreed to defendant's (appellant's) latter proposal" (J.A. 50).

Thereafter, on March 30, 1954, counsel for the two parties jointly addressed a letter to the chairman of the Joint Standing Committee asking the following question: "Was it the intention of the Joint Standing Committee in making that decision to require Columbia Typographical Union, Local No. 101, to refund to S. K. Trunnell the fine he had paid?" (J.A. 43-44).

On April 20, 1954, however, counsel for the appellee wrote the chairman of the Committee that the appellee was withdrawing its request that the Committee state its

intention in making its 1951 decision (J.A. 45-46). The reason for this withdrawal was said to be a dispute between counsel (see J.A. 51-53) as to the desirability or necessity of filing briefs in the matter, it being the view of appellant's counsel that briefs should be filed so that the contentions of the parties would be accurately before the Committee (J.A. 53) while "it has been the contention of the Evening Star that this matter does not require the filing of briefs since the question of your intention in 1951 does not lend itself to briefing by the parties" (J.A. 45).

Appellee then brought suit in the District Court against the appellant for a declaratory judgment and for damages for breach of contract (J.A. 2-5). Appellee requested a judicial declaration that appellant's actions (1) in imposing a fine on S. K. Trunnell, (2) in refusing to abide by the terms of the November 16, 1951, decision of the Joint Standing Committee, and (3) in refusing to pay to appellee the sum of \$40 were violations of the agreement dated June 12, 1951 (J.A. 5). A judgment in favor of appellee in the sum of \$40 was also requested (J.A. 5).

Appellant filed an answer, denying that appellee had been obligated to reimburse Mr. Trunnell in the amount of \$40 and denying that appellant had failed to abide by the 1951 arbitration decision of the Joint Standing Committee (J.A. 40). Appellant also filed a counterclaim (J.A. 41), alleging that the joint letter of March 30, 1954, constituted an agreement to submit to arbitration the union's obligation to refund the \$40 fine and that the appellee had failed and refused to fulfill this agreement to arbitrate. Appellant accordingly asked (J.A. 42) that, under the jurisdiction conferred by Section 301 of the Labor Management Relations Act, the appellee be required to fulfill its duty to arbitrate the claim it was here asserting in its complaint and that the court direct specific performance of the aforesaid agreement to arbitrate.

Appellee moved to dismiss appellant's counterclaim for lack of jurisdiction over the subject matter (J.A. 46), a motion which was denied by Judge Holtzoff (J.A. 46-47). In an accompanying opinion (J.A. 47-49), Judge Holtzoff ruled that the court had jurisdiction under Section 301 of the Labor Management Relations Act to decree specific performance of an arbitration clause in a collective bargaining agreement. That section, he held, was not limited to suits for money damages.

After appellee filed an answer to appellant's counterclaim (J.A. 49-55), appellant filed a motion for summary judgment on the ground that the pleadings on their face showed an agreement to arbitrate the matter in dispute in this proceeding and that appellee had plainly failed and refused to carry out that agreement (J.A. 55). This motion was denied by Judge Keech (J.A. 56).

Finally, on appellee's motion for summary judgment, Judge McGarraghy decreed that summary judgment be entered in favor of appellee for the sum of \$40 and that appellee have execution therefore (J.A. 60-61). In the accompanying memorandum opinion (J.A. 59-60), Judge McGarraghy held that the 1951 arbitration decision of the Joint Standing Committee was clear and unambiguous and that there was no occasion to arbitrate the meaning of that decision. He stated that the appellee "was required to reimburse its foreman for the fine improperly levied against him as a result of the performance of his duties" for the appellee. Thus, he concluded, the appellant was liable to the appellee for the payment made by the appellee resulting from appellant's breach of Section 20(a) of the collectively bargained agreement of June 12, 1951.

STATUTE INVOLVED

Section 301(a) of the Labor Management Relations Act of 1947 (29 U.S.C. § 185):

Suits for violation of contracts between an employer and a labor organization representing employees in

an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF POINTS

1. The appellee employer was under no legal duty to reimburse its foreman for the fine assessed against him and hence the appellant union did not become liable to the appellee for the amount of that fine. At the very least, appellant was entitled to prove this point at a trial on the merits.

2. The appellee, having agreed to submit to further arbitration the meaning of the 1951 arbitration decision, was bound to perform that agreement and appellant was accordingly entitled to a decree for specific performance.

SUMMARY OF ARGUMENT

The Joint Standing Committee found in 1951 that the appellant union's disciplinary action against appellee's foreman, a member of the union, was in violation of the contract between appellant and appellee. Before this decision had been rendered, however, the foreman had paid the \$40 fine assessed against him by the appellant union and the appellee employer had reimbursed him for the amount of that fine.

The reimbursement of the foreman was purely a voluntary act by the appellee. While a principal is bound to reimburse his agent for such losses or expenditures as may result from the performance of the agency, this rule obviously does not apply where the agent incurs merely a contingent liability, one that is immediately disputed and one that is ultimately resolved in his favor. The continuing availability of the arbitration procedure—which was in fact invoked immediately—made it plain that the

assessment of the fine was not a final determination of the foreman's liability. The very fact that appellee vigorously denied at all times any liability on the part of the foreman is conclusive evidence of its knowledge that it was a volunteer in making the reimbursement, unencumbered by any legal responsibility or legal promise in this respect. Hence the appellee acquired no legal rights against the appellant union in making the reimbursement.

Even if appellant's foregoing legal argument be not accepted at this time, it was entitled to prove its version of the legal relationships between appellee and its foreman at a trial on the merits. There are substantial issues of fact to be developed in that connection and summary judgment for the appellee was therefore inappropriate.

The appellant filed a counterclaim in this case asking specific performance of the agreement of March 30, 1954, to submit to further arbitration the meaning of the 1951 arbitration decision. The court below erred in stating that in its opinion that decision was clear and needed no arbitration of its meaning. The important point is that the parties did not consider its meaning to be clear and did in fact agree to submit the problem to arbitration. Arbitration of the issue was also mandatory under the terms of the collectively bargained agreement between the parties.

The reasons asserted by the appellee in its unilateral withdrawal from the request for arbitration do not justify or excuse the breach of the agreement of March 30, 1954. Such reasons related solely to the procedure to be followed before the Joint Standing Committee and to the scope of the evidence which the Committee should hear. These were properly matters to be determined by the Committee.

The District Court, as Judge Holtzoff has already ruled in this case, had jurisdiction under Section 301 of the Labor Management Relations Act to consider the counterclaim and to order specific performance. The court below erred in failing to order such performance in light of the un-

justified refusal of the appellee to permit further arbitration of the matter.

Appellee's contention that the Joint Standing Committee, having once issued a "final and binding" decision, had exhausted its power over the case is without merit. Arbitrators always have power, unless limited by statute or agreement of the parties, to determine the meaning and application of a former award. And so in this case, where the parties to the arbitration consented to or invoked the authority of the arbitrators to make a further determination, no objection can be heard as to the arbitrators' jurisdiction.

ARGUMENT

1. The appellee was under no legal duty to reimburse its foreman for the fine assessed against him and hence appellant did not become liable to the appellee for the amount of that fine. Appellant, at the very least, was entitled to prove this point at a trial on the merits.

It is apparent from the foregoing statement of the case that the appellee is a mere volunteer in this proceeding and that no legal obligation rests on the appellant to reimburse the appellee for the \$40 which it gratuitously gave its foreman, S. K. Trunnell.

The facts are clear that the Joint Standing Committee found that the appellant union's disciplinary action against Trunnell was a violation of Section 20(a) of the contract between the parties to this action. Its decision is "final and binding" in that respect. But it does not follow, in the language of the court below (J.A. 60), that the appellee newspaper company "was required to reimburse its foreman for the fine improperly levied against him as a result of the performance of his duties" for the appellee or that the appellant union is therefore liable to the appellee for the payment made by the appellee (resulting from the appellant's breach of the agreement).

The appellee and its foreman Trunnell were in a principal-agent relationship. Under well-established rules, the employment of an agent "implies a promise on the part of the principal to repay or reimburse him (the agent) for such losses or expenditures as may become necessary, or may result from the performance of his agency." *Bibb v. Allen*, 149 U.S. 481, 499. See also *Giovannoni v. Waple & James*, 70 App. D. C. 229, 231; 105 F. 2d 108, 110.

But to conclude that this rule of law required the appellee to reimburse its foreman because the foreman's fine resulted from the performance of his agency is to abuse the rule of law. As Justice Cardozo has said, "Few formulas are meant to serve as universals. A progeny deformed or vicious may be known as illegitimate. Here as elsewhere we are to be on our guard against the perils that are latent in a 'jurisprudence of conceptions'." *Schubert v. August Schubert Wagon Co.*, 249 N. Y. 253, 164 N. E. 42.

Quite obviously, the rule that a principal must reimburse his agent for losses or expenditures resulting from the performance of his agency was meant to apply only where the agent has suffered a final, irretrievable loss or where he has been compelled to make expenditures which cannot or will not be returned by the recipient of such expenditures. Where the agent has incurred a contingent liability, one that is subject to further review and ascertainment, there can be no requirement that the principal reimburse him at that point. And where both the principal and the agent deny that the agent has any liability at all, a denial that is ultimately successful, no legal burden rests on the principal to reimburse the agent at any point.

Thus in *George E. Warren Co. v. Wentz*, 281 Pa. 364, 126 A. 769, an agent made a contract to sell and deliver coal to a purchaser except where there was "an occurrence beyond the seller's control." The principal sold his coal mines and was thus unable to deliver any more coal to

his agent. Without raising the defense that there had been "an occurrence beyond the seller's control," the agent made a money settlement with the coal purchaser, despite the principal's denial of any liability arising out of the situation. The court held that the agent could not recover from the principal the amount of the money settlement paid by the agent. This was an expenditure that the agent need not have made since he had a complete defense under the contract to any claim by the coal purchaser. The principal's denial of liability prior to the time of settlement was an adequate warning to the agent that he need not incur such a voluntary liability in the course of his duties. Having done that the principal was under no duty to reimburse the agent.

And so in this case, the appellee newspaper company—the principal—immediately and consistently denied that the foreman had any legal liability to the appellant union. The day after the \$40 fine was assessed on the foreman, the appellee protested the assessment as a violation of Section 20(a) of the agreement and demanded that the matter be submitted to arbitration (J.A. 4). The continuing availability of the arbitration procedure made it plain that the assessment of the fine was not a final determination of the foreman's liability.

Hence when the appellee on June 25, 1951—but one week after the assessment and nearly five months before the arbitration decision of the Joint Standing Committee—reimbursed the foreman for the amount of the \$40 fine paid by him, it was performing a voluntary act unencumbered by any legal responsibility or any express or implied promise to the foreman. Under the appellee's contention, the foreman was never obligated to pay the fine to the appellant union. It was never legally necessary, if appellee's argument be accepted, for the foreman to incur any loss or expenditure of \$40 as a result of the performance of his agency. Thus neither on June 25,

1951, nor on any other date could there have been any implied promise on the appellee's part to reimburse him for such an expenditure.

The very fact that the appellee was vigorously denying any liability from the foreman to the appellant union is conclusive evidence that the appellee must have known that it was acting in a purely voluntary capacity in making the reimbursement. The natural consequence of appellee's contention was that the foreman would receive his \$40 back from the appellant union. There was therefore no practical or legal compulsion for appellee's reimbursement.

It follows that the appellee acquired no legal right against the appellant union in making reimbursement. If the appellant owes any obligation to pay back the \$40, it is an obligation to the foreman Trunnell and not to the appellee. There is no evidence that the foreman has assigned his claim to the appellee. His claim remains unasserted and undetermined. The claim that the appellee here asserts is not Trunnell's claim. It is a claim that the appellant should pay the appellee the amount of money that it voluntarily gave the foreman as a gift, a gift that was not necessitated by any rule of agency or other principle of law. It is submitted that there can be no legal justification for imposing such an unwarranted obligation on the appellant union.

But even if appellant's view as to the nature of the principal-agent relationship between the appellee and the foreman be not accepted at this time, appellant has a clear right to attempt to prove its version of that relationship at a trial on the merits. As stated in the Restatement of the Law of Agency, Vol. II, p. 1015, § 438 (1933):

In the absence of specific terms in the agreement of employment, the extent of the principal's duty to indemnify an agent for payments made or losses suffered by an agent in the performance of authorized transactions or as a result of such transactions is

based upon a fair apportionment of the risks of employment in light of business customs, the relationship of the parties, and the nature of the agent's undertaking.

Appellant thus asserts its right to inquire into and prove the "business customs, the relationship of the parties, and the nature of the agent's undertaking" in support of its thesis that the appellee was not obligated to reimburse its foreman in the circumstances of this case. Its right to develop that thesis—if it should prove unacceptable at the present posture of the case—should not be foreclosed by a summary judgment as entered in the court below. Substantial and genuine issues of fact thus become apparent, making summary judgment inappropriate under Rule 56 of the Federal Rules of Civil Procedure.

2. The appellee, having agreed to submit to further arbitration the meaning of the 1951 arbitration decision, was bound to perform that agreement and appellant was accordingly entitled to a decree of specific performance.

The District Court held (J.A. 60) that the arbitration decision of the Joint Standing Committee "is clear and unambiguous and does not require interpretation, and there is no occasion to arbitrate the meaning of the decision." With all due respect to the lower court's views as to the clarity of the arbitration decision, the fact remains that the parties themselves did not consider the decision to be so clear and unambiguous as to preclude arbitration of the meaning of the decision. And their agreement to arbitrate that meaning must be respected and enforced no matter how unnecessary a court may think such an agreement to be. The failure of the court below to decree specific performance of the agreement to arbitrate, as requested in appellant's counterclaim, is plainly reversible error.

That there was an agreement to submit the matter to further arbitration is clear beyond dispute. Attached to

the answer and counterclaim of the appellant was an exhibit consisting of a letter jointly written on March 30, 1954, by counsel for the parties asking whether it had been the intention of the Joint Standing Committee in making its 1951 decision to require the appellant union to refund to Trunnell the fine he had paid (J.A. 43-44). This agreement or letter was written as a result of previous meetings of the parties wherein the appellee agreed to the appellant's proposal "to return the controversy to the Joint Standing Committee with a request that that Committee's decision . . . be clarified as to whether it was the Committee's intention that the \$40.00 illegal fine be repaid to S. K. Trunnell" (J.A. 49-50).

Moreover, Section 6(b) of the agreement between the parties (J.A. 8) provided for the referral to the Joint Standing Committee of "any controversies involving interpretation or application of this agreement." The controversy over the duty of the appellant union to reimburse Trunnell, under the 1951 decision of the Committee, was clearly a controversy involving the "interpretation or application of this agreement." It was a controversy as to whether the agreement, as interpreted and applied by the Committee in its 1951 decision, compelled the appellant union to refund a fine that had been assessed against one of its members, a member who had been reimbursed for the fine by his employer. Arbitration of that issue was thus compulsory under the terms of the agreement. And by the terms of Section 6(i), appellee has agreed not to request release from its commitment to arbitrate all disputes.

In any event, the important fact is that the parties did agree that the meaning of the 1951 decision was unclear and that further arbitration as to the matter was necessary. The 1951 decision was ambiguous as to its intent to intrude into the union's internal affairs and affirmatively to command the rescission of the union's imposition of a fine

against one of its members. It was also ambiguous as to whether a refund to Trunnell was appropriate or necessary in light of appellee's voluntary reimbursement of Trunnell, a reimbursement which occurred nearly five months *before* the decision had been rendered. See *Lyle v. Rodgers*, 5 Wheat. 394, where Chief Justice Marshall held that a valid objection to an award of arbitrators was its failure precisely to distinguish between moneys to be paid by a party in his representative character and those for which he was personally bound. Arbitration was thus appropriate in light of the ambiguities that existed. The joint letter of March 30, 1954, was the natural consequence of those ambiguities and was in every sense an agreement to arbitrate.

The appellee's purported withdrawal of April 20, 1954 (J.A. 45), was a clear breach of the agreement to arbitrate, including Section 6(i) thereof. The letter of that date sought to withdraw "the Company's request" for a statement of the Joint Committee's intention in making its 1951 decision. But the letter of March 30, 1954 (J.A. 43-44) was not "the Company's request," which the Company was free to withdraw at will. It was the joint request or agreement of both parties that could be withdrawn only by joint consent.

The reasons asserted for appellee's withdrawal of its request do not justify or excuse the breach of the agreement of March 30. In the April 20th letter appellee asserts (J.A. 45) that the reason was the appellant's "view that briefs should be filed by the parties in this matter," while it was the appellee's contention that "this matter does not require the filing of briefs." Appellee's reply to the counterclaim (J.A. 50) somewhat broadens this allegation by asserting that the appellant had "proposed to enlarge the scope of the Joint Committee's consideration by presenting new matter to it." Exhibits attached to that reply indicated that appellant had inquired "about further proceedings" and had mentioned "some matters not of

record which we will want to put before him (the arbitrator) and you may have some" (J.A. 51). Appellant had also indicated (J.A. 53) that the issue might be handled solely "by the filing of briefs" so that "the contentions of the parties were accurately placed before them." And appellant's position in this respect was in large part known to appellee before its counsel actually signed the letter dated March 30 (J.A. 52).

These are the only considerations relied upon by the appellee in withdrawing from the agreed-upon arbitration. They relate solely to the procedure to be followed before the Joint Standing Committee and to the scope of the evidence which the Committee should bear. These were properly matters to be heard and determined by the Committee. Since the issue was clearly defined in the letter of March 30, it was the Committee's function and power to determine these procedural matters. It could determine whether briefs should be filed. It could determine whether matters not already of record should be introduced. It is well established that, unless limited by statute or agreement of the parties, arbitrators have plenary power to determine the admissibility and competency of evidence and to establish procedural rules relating to the submission of briefs. See *Koepke v. E. Liethen Grain Co.*, 205 Wis. 75, 236 N.W. 544; 6 C.J.S., *Arbitration and Award*, § 64(b), p. 204. Those considerations, however, afford no adequate reason for appellee's refusal to observe the agreement which it had made. And certainly appellee's position—that the Committee should have all the relevant facts and should have the conflicting viewpoints properly presented to it in the form of briefs—was not arbitrary or inconsistent in any way with the agreement to arbitrate.

Even if it be felt that appellee was justified in withdrawing from this agreement, the collective agreement of June 12, 1951, between the parties would still control. Section 6(b) of that agreement (J.A. 8) provides that "any controversies involving interpretation or application of this agreement" shall be submitted to arbitration.

As Judge Holtzoff has already held in this proceeding (J.A. 47-49), appellee's counterclaim for specific performance of the agreement to arbitrate this dispute is within the power and jurisdiction of the District Court. See also *Textile Workers Union v. American Thread Co.*, 113 F. Supp. 137 (D. Mass.); *Insurance Agents' International Union v. Prudential Ins. Co.*, 122 F. Supp. 869 (M.D. Pa.); *Milk and Ice Cream Drivers v. Gillespie Milk Prod. Corp.*, 203 F. 2d 650 (C.A. 6); *American Federation of Labor v. Western Union Tel. Co.*, 179 F. 2d 535 (C.A. 6); *Textile Workers Union v. Aleo Mfg. Co.*, 94 F. Supp. 626 (M.D.N.C.). That ruling, made after full consideration and briefs, is entitled to great weight, to the extent of making applicable the doctrine of the law of the case. See *United States v. U. S. Smelting Co.*, 339 U.S. 186; *Lincoln Gas & E. Co. v. Lincoln*, 250 U.S. 256.

It follows that the court below erred in not exercising its jurisdiction over the counterclaim and in not ordering specific performance of the agreement to arbitrate the issue arising out of the meaning of the 1951 arbitration decision. Appellee's belated defense, presented for the first time in the court below without having been advanced to the Joint Standing Committee, that the Committee was without jurisdiction to consider the submitted issue is patently without merit.

There can be no quarrel, of course, with the general principle relied upon by the appellee that a final determination of a submitted question exhausts the powers of the arbitrators and thereafter they have no power to recall, reconsider, amend or otherwise alter the award. As stated by the Supreme Court in *Bayne v. Morris*, 1 Wall. 97, 99, "Arbitrators exhaust their power when they make a final determination on the matters submitted to them. They have no power after having made an award to alter it; the authority conferred on them is then at an end." See also *St. Charles v. Stookey*, 154 F. 772

(C.A. 8), cert. den., 208 U.S. 617; *Rust Engineering Co. v. Lehigh Structural Steel Co.*, 65 App. D.C. 77, 79 F. 2d 830, 831; *Wabash Ry. Co. v. American Refrigerator Transit Co.*, 7 F. 2d 335 (C.A. 8).

But that general principle, like all broad statements, has its limitations and exceptions. Unless validly limited by statute or agreement of the parties, arbitrators always have power to reconsider their awards in order to correct mistakes in matters of form. But reconsideration is not limited to such formal matters. *Cumberland v. North Yarmouth*, 4 Me. 459. Awards have been recommitted for more specific findings, *Johnston v. Paul*, 22 Minn. 17, *Bowers v. Worrell*, 1 Browne 170 (Pa.), or to allow the arbitrators to find separately upon the matters submitted where such findings are necessary to the justice of the case, *Pope Construction Co. v. State Highway Commission*, 84 S.W. 2d 920 (Mo.), or to pass upon matters embraced in the submission but omitted in the award, *Pierce Steel Pile Co. v. Flannery*, 319 Pa. 332, 179 A. 558; *Cracchiolo v. Carlucci*, 62 Ariz. 284, 157 P. 2d 352. See 6 C.J.S. Arbitration and Award, §113(b), p. 264; 3 Am. Jur., Arbitration and Award, §93; *Frederick v. Margwarth*, 221 Pa. 418, 70 A. 797; *Byars v. Thompson*, 12 Leigh (Va.) 550, 37 Am. Dec. 680. And in *Order of Railroad Telegraphers v. New York Cent. R. Co.*, 181 F. 2d 113 (C.A. 2), it was held that an award issued under the Railway Labor Act could be resubmitted to the arbitrators to determine the meaning and application of the award.

Of particular relevance to the instant proceeding is the well recognized exception to the rule of finality to the effect that as to any issue "the arbitrators can take further action when the parties to the arbitration consent thereto." Annotation, Award or decision by arbitrators as precluding return of case to or its reconsideration by them, 104 A.L.R. 710, 716. See *Eveleth v. Chase*, 17 Mass. 458; *People ex rel Cranford Co. v. Willcox*, 153 App. Div. 759, 138 N.Y.S. 1055; *Schenck v. Voorhees*, 7 N.J.L. 383.

Here the appellant and appellee both agreed to submit the issue as to the meaning of the 1951 decision to the Joint Standing Committee. There was nothing in the collective contract or elsewhere to forbid such a submission. Indeed, the broad language of Section 6(b) encompasses just such a submission. In these circumstances, the specific agreement of the parties to submit the question to further arbitration was enough to confer jurisdiction on the Joint Standing Committee to consider the matter and render its decision thereon.

The fact that the collective agreement provided in Section 6(g) that the Committee's award shall be "final and binding" (J.A. 9) does not militate against this conclusion. As was said in *Pierce Steel Pile Corp. v. Flannery*, 319 Pa. 332, 179 A. 558,

The statement in the contract that the decision of the arbitrators was to be final and binding could mean only a proper decision, that is, one which was definite and could be enforced.

And so in this case, both parties agreed that the 1951 decision of the Committee was not "a proper decision" in that it was indefinite as to whether the intention was "to require Columbia Typographical Union, Local No. 101, to refund to S. K. Trunnell the fine he had paid" (J.A. 44). Their agreement to submit that matter to arbitration was thus not in derogation of the agreed upon finality of "a proper decision" of the Committee.

The appellant by its counterclaim seeks to vindicate the principle of arbitration, the principle to which the parties in this proceeding have contractually subscribed. As stated by the late Dean Harry Shulman, *Reason, Contract, and Law in Labor Relations*, 68 Harv. L. Rev. 999, 1024 (1955):

The arbitration is an integral part of the system of self-government. And the system is designed to aid management in its quest for efficiency, to assist union

leadership in its participation in the enterprise, and to secure justice for the employees. It is a means of making collective bargaining work and thus preserving private enterprise in a free government. When it works fairly well, it does not need the sanction of the law of contracts or the law of arbitration. It is only when the system breaks down completely that the courts' aid in these respects is invoked.

Because appellee has refused to abide by the arbitration agreement and has thereby caused the arbitration system to break down completely, appellant has invoked the aid of the court below to vindicate that system. The failure of the court below to come to appellant's assistance and to grant the specific performance requested in the counterclaim constitutes reversible error.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed with directions to grant the specific performance requested by the appellant in its counterclaim.

Respectfully submitted,

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January 18, 1956.

SL 11-10-8
4-17-56
(2)

BRIEF FOR APPELLEE

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT *United States Court of Appeals*
For the
District of Columbia Circuit

No. 12,984

FILED FEB 13 1956

Joseph W. Stewart
CLERK

COLUMBIA TYPOGRAPHICAL UNION, No. 101, *Appellant,*

v.

THE EVENING STAR NEWSPAPER COMPANY, *Appellee.*

**Appeal from Summary Judgment of the United States
District Court for the District of Columbia**

WILLIAM B. JONES
GEORGE E. HAMILTON
GEORGE E. HAMILTON, III
916 Union Trust Building
Washington 5, D. C.
Counsel for Appellee

STATEMENT OF QUESTIONS PRESENTED

In the opinion of the appellee the questions are:

1. Whether it was proper for the District Court to award appellee a summary judgment in the amount of \$40.00, which sum appellee reimbursed its newspaper composing room foreman after the latter had been fined that amount by appellant Union and which action by the appellant was held in a final and binding arbitration decision to have violated the collective bargaining agreement between appellant and appellee.

2. Whether it was proper for the District Court to have refused to decree specific performance of the arbitration clause of a collective bargaining agreement when there had been a prior final and binding arbitration decision holding that appellant had violated the terms of that Agreement by fining appellee's foreman.

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BRIEF FOR APPELLEE

COUNTER-STATEMENT OF THE CASE

The following counter-statement of the case is made in order to set forth material facts omitted in appellant's statement:

Section 6(g) of the Agreement provided in part (J.A. 9):

When a controversy is referred to the Joint Standing Committee, this committee shall convene within

five days to hear both parties or their representatives. If no decision is reached within five days then a fifth member shall be added to the committee, * * *. The decision of this committee shall be final and binding.
* * *

The acts for which Trunnell was fined by the appellant Union were those done by him in the performance of his duties as appellee's foreman and were authorized by the Agreement. (J.A. 3; admitted appellant's answer, J. 40.)

Subsequent to the March 30, 1954 joint letter of counsel to Fred J. Eden, Chairman, Joint Standing Committee, counsel for the appellant, under date of April 2, 1954, addressed a letter to counsel for the appellee stating that appellant would want to put before the Chairman "some matters not of record". Appellant's counsel proposed that such "matters not of record" be presented by stipulation, "though I suppose the quickest would be to put on a witness or two." (J.A. 51.)

Under date of April 7, 1954 counsel for appellee addressed a letter to counsel for appellant, in which it was stated "I thought that all we were going to do was ask Eden to advise us of what his intentions were when he made the 1951 decision. * * * It seems to me if we attempt to put any new matter into the record we can hardly ask Eden to consider that matter and at the same time state what he intended when he made his 1951 award on the record then before him. * * * " (J.A. 52.)

On April 8, 1954, counsel for appellant replied and stated to appellee's counsel "it is my view that the matters we wish to bring to the attention of the Joint Standing Committee can be handled by the filing of briefs. I do feel that the Joint Standing Committee would be assisted if the contentions of the parties were accurately placed before them." (J.A. 53.)

SUMMARY OF ARGUMENT

1. The collective bargaining agreement between appellant and appellee provided that the latter, through its foreman representative, had vested in it exclusive authority, operation and control of its composing room. Appellant agreed not to fine or discipline the foreman (also a Union member) for any act in the performance of his duties as foreman when such action was authorized by the Agreement. Notwithstanding that Agreement, appellant fined the foreman for acts, authorized by the Agreement, which were performed by him in carrying out his foreman duties.

After the fine was imposed on the foreman, the controversy between the parties as to the propriety of appellant's action was referred to the Joint Standing Committee provided for in the Agreement to arbitrate disputes. That Committee found appellant guilty of violating the collective bargaining contract. By the terms of the Agreement that decision was final and binding on both parties.

Appellee reimbursed its foreman for the fine he paid. This it was obligated to do since the foreman's fine by appellant resulted from the performance of his duties as agent of the appellee. And appellee's obligation existed even though appellant had no right to fine the foreman.

It was the amount of the fine—\$40.00—that constituted the damages suffered by appellee as a result of the breach of contract by appellant. Because of the above generally stated uncontroverted facts and the law that required appellee to reimburse its foreman the District Court properly awarded appellee a summary judgment.

2. Appellant's contention that the question of the right of appellee to recover the \$40.00 it reimbursed its foreman should be submitted to arbitrators is not only without merit but it also constitutes a denial by appellant of the terms of the collective bargaining agreement to which it was a party. That Agreement provided that controversies

between the parties be referred to the Joint Standing Committee created by it; and that a decision by the Committee was to be "final and binding" on both of the parties.

After appellant fined appellee's foreman, the dispute as to appellant's right to do so was submitted to the Committee. The arbitration decision resulting from that submission held appellant guilty of violating the Agreement. It was because of that breach of contract, as found by the Committee, that appellee instituted this action to recover the sum it was required to expend in reimbursing its foreman.

To resubmit this controversy to the Joint Standing Committee would be to disregard the final and binding effect given by the terms of the Agreement to the arbitration decision that appellant violated the contract when it fined the foreman. That provision in the Agreement was a recognition of the principle of law that arbitrators exhaust their power when they make a final determination on the matters submitted to them. The question submitted was whether the appellant violated the Agreement in fining the foreman. As has been seen, the Committee held that it had. It thus conclusively determined the rights of the appellant and appellee.

Cases cited by appellant to the effect that arbitration decisions can be resubmitted to the arbitrators fall into three classes: (1) arbitrations pursuant to statutes which specifically provide for resubmission under certain conditions; (2) arbitrations resulting from a rule of court referring the controversy to arbitrators where the court has the power to resubmit the decision; and (3) incomplete arbitration awards where the arbitrators did not consider the entire dispute submitted, or where the agreement provided for successive awards, or where the arbitrators did not deliver the award to the parties before altering it. But this case falls into none of those classes. Here the Agreement was a private contract not resulting from nor added

to by any statute or rule of court. And, as has been observed, the Committee dealt fully with the question submitted to it. The Agreement made their all inclusive decision "final and binding".

Equally without merit is appellant's contention that there was an agreement between the parties, by their counsel, on March 30, 1954, to resubmit the controversy to arbitration. An examination of the exchange of correspondence between counsel and between them and the Chairman of the Committee will show that the latter was only asked whether the Committee, at the time of making its 1951 decision, intended that appellant should refund the fine to appellee's foreman. The intention of an arbitrator is not subject matter of arbitration. It was when appellant stated that it wished, in 1954, to submit new matter to the Committee, in order to aid the latter in stating what was its 1951 intention, that appellee withdrew its request for an expression of the Committee's intention.

ARGUMENT

1. **Appellant violated its agreement with appellee in fining latter's foreman and, since appellee was required to reimburse its foreman, appellant is liable in damages to appellee for the amount of the reimbursement.**

Appellee instituted this action to recover damages sustained by it as a result of appellant's violation of Section 20(a) of the June 12, 1951 contract between the parties. The appellant violated the contract when it fined appellee's foreman Trunnell \$40.00 because of authorized acts done by him in the performance of his foreman duties. The \$40.00 fine was an expense paid by Trunnell as a result of the performance of his agency and appellee reimbursed him as it was legally obligated to do. That \$40.00 reimbursement was the damage suffered by appellee as a result of appellant's breach of contract and is the amount appellee is entitled to recover in this action. That is the claim on which summary judgment was awarded to appellee. In

his opinion Judge McGarraghy stated: "The plaintiff [appellee] was required to reimburse its foreman for the fine improperly levied against him as a result of the performance of his duties for the plaintiff. Therefore, the defendant [appellant] is liable to the plaintiff for the payment made by plaintiff resulting from defendant's breach of the Agreement." (J.A. 60.)

The rendering of the summary judgment was the proper disposition of this action. There was no genuine issue of material fact and appellee was entitled to the judgment as a matter of law. Rule 56(c), Federal Rules of Civil Procedure; *Dewey v. Clark*, 86 U.S. App. D.C. 137, 180 F.2d 766 (1950).

The material facts in this case are as follows:

On June 12, 1951, appellee and appellant entered into a newspaper contract and scale of prices agreement, hereinafter referred to as "Agreement". (J.A. 6-34.) During its effective period, which included all times herein referred to, the Agreement established and governed the rights and obligations of the parties with respect to appellee's composing room operations and the employees therein. Section 1(a) of the Agreement stated:

This agreement alone shall govern relations between the parties on all subjects concerning which any provision is made in this agreement, and any dispute involving any such subjects shall be determined in accordance with the local Code of Procedure set forth in Section 6 hereof.

Section 20(a) of the Agreement provided:

The operation, authority and control of each composing room shall be vested exclusively in the office [the newspaper company] through its representative, the foreman, who shall be a member of the Union. No foreman shall be subject to fine, discipline or expulsion by the Union for any act in the performance of his duties as foreman when such action is authorized by this agreement.

At all times mentioned herein S. K. Trunnell was the foreman in charge of appellee's composing room and a member of appellant Union as he was required to be under the terms of the Agreement. (Appellee's complaint, J.A. 3; admitted in appellant's answer, J.A. 40.)

On June 17, 1951, the members of appellant Union at a regular meeting approved a report of appellant's Executive Committee, which recommended the assessment of a fine of one day's pay against S. K. Trunnell as an "admonition" because of acts performed by him, notwithstanding the fact that those acts were done by Trunnell in the performance of his duties as appellee's foreman and were authorized by the Agreement. (Appellee's complaint, J.A. 3; admitted in appellant's answer, J.A. 40.) The assessed fine of one day's pay amounted to \$40.00. (Plaintiff's Request for Admissions under Rule 36, J.A. 56, and Defendant's Reply, J.A. 57.) Appellant collected from Trunnell the fine of \$40.00. (Stipulation, J.A. 57-58.) Appellee reimbursed its employee Trunnell the sum of \$40.00 which he paid appellant Union. (Affidavit, J.A. 58-59.)

Subsequently, the controversy was referred, pursuant to Section 6 of the Agreement, for arbitration to the Joint Standing Committee, which on November 16, 1951, made an arbitration decision holding that defendant's action in imposing the fine on Trunnell was a violation of Section 20(a) of the Agreement. (J.A. 34-40; joint letter of counsel, Exhibit A to appellant's answer, J.A. 43-44.)

While appellant does not contest those material facts, it contends that the law does not entitle the appellee to the summary judgment. It takes the position that appellee was not required to reimburse its foreman.

In considering that contention it should be noted at the outset that appellant admits that the Joint Standing Committee made a final and binding decision that the fining of foreman Trunnell by appellant Union was a violation of

Section 20(a) of the Agreement. (Appellant's Brief, 10.) Such an admission could not be avoided in light of Section 6(g) of the Agreement (J.A. 9) and the law *Rust Engineering Co. v. Lehigh Structural Steel Co.*, 65 App. D.C. 77-78, 79 F. 2d 830-831 (1935); *Wabash Ry. Co. v. American Refrigerator Transit Co.*, 7 F. 2d 335, 351 (C.A. 8, 1925).

Since the arbitration decision conclusively determined that the actions for which Trunnell was fined were those he was compelled to perform as foreman for the appellee, the latter was required by law to reimburse him for that expenditure. As was said in *Bibb v. Allen*, 149 U.S. 481, at 499, the employment of an agent "implies a promise on the part of the principal to repay or reimburse him [agent] for such losses or expenditures as may become necessary, or may result from the performance of his agency." See also *Giovannoni v. Waple & James*, 70 App. D.C. 229, 231, 105 F. 2d 108, 110 (1939).

While appellant recognizes the principle set forth in the *Bibb* case, *supra*, it contends that that rule does not apply in the instant case. Appellant states its position thus: "Where the agent has incurred a contingent liability, one that is subject to further review and ascertainment, there can be no requirement that the principal reimburse him at that point. And where both the principal and the agent deny that the agent has any liability at all, a denial that is ultimately successful, no legal burden rests on the principal to reimburse the agent at any point." (Appellant's Brief, 11.)

Appellant's argument that a principal is not required to reimburse his agent for an expenditure made by the latter and paid to a third party until the question of liability is fully reviewed and ascertained is tantamount to saying that the agent alone must bear the loss until it is finally and authoritatively determined that the money paid by the agent was rightfully owed by the principal to the third party. If such were the law, it is conceivable that, in a

proper case, years might elapse while arbitrators and courts considered the question of the principal's liability, during which period the agent would be deprived of his own money because of an expenditure necessarily incurred in the transaction of his principal's affairs. Appellant cites no authority for that proposition which is understandable since it is contrary to the rule that there is an implied promise on the part of the principal to reimburse the agent for expenditures made by the latter in the performance of his agency. *Bibb v. Allen*, 149 U.S. 481, 499. It is not the agent but the principal, whose business was being furthered or protected, who should suffer the loss while the question of liability is being arbitrated or litigated, or both.

In purporting to support its contention that no legal burden rests on the principal to reimburse the agent "at any point" where both principal and agent successfully deny the agent's liability, appellant cites *George E. Warren Co. v. Wentz*, 281 Pa. 364, 126 A. 769 (1924). But that case is not apposite here. There the agent had contracted with the principal to sell coal mined by the latter with the understanding that if the principal sold his coal mine during the period of that contract he would arrange with the new owners to continue to supply coal under contracts made by the agent with third parties. For a contract by the agent with a third party to be binding on the principal the latter had to know of the agent's contract. The agent made a contract with a third party but the principal was ignorant of it. During the period covered by the agent's contract, the principal sold the mine and made no arrangements with his successors to supply coal under the agent's contract. The third party threatened suit and the agent brought that fact to the principal's attention. The principal denied liability to the third party on the ground that he had never ratified the agent's contract. The agent then settled with the third party although he was not liable to the latter since his contract relieved him of responsibility

of delivering coal to the third party if he were prevented from doing so "by * * * any occurrence beyond seller's [agent's] control." In the action brought by the agent against the principal to recover the amount paid in settlement with the third party judgment was in favor of the principal.

The *Wentz* case facts are most unlike those of the case at bar. There the question of liability arose out of a contract made by the agent with a third party which was not binding on the principal. Here Trunnell, appellee's foreman, made no contract with appellant. The contract at issue was between appellee and appellant and by the terms of Section 20(a) the latter agreed not to fine or discipline appellee's foreman. The basic claim asserted in the *Wentz* case was that of the third party that the agent had violated its contract with the third party. Here the claim is that the appellant violated its contract with the principal, i.e., appellee. It was of no consequence to the principal in the *Wentz* case that the agent had a good defense to the third party's claim since the agent's contract with the third party was not binding on the principal. In the case on appeal here the contract was binding on both the appellant and the appellee. And it was because Trunnell was carrying out the terms of his principal's contract that appellant violated that Agreement by fining him.

The fact that appellant had no right to assess the fine did not make it any less a fact that Trunnell expended his \$40.00 as a result of "the performance of his agency." Expenditures made by an agent in carrying out his agency must be reimbursed by the principal even though the expenditures were made as a result of a baseless claim asserted by a third party. In *Admiral Oriental Line v. United States*, 86 F. 2d 201 (C.A. 2, 1936), a ship's agent was sued by cargo owners after the cargo was lost upon the sinking of the ship. The agent was successful in the litigation but it nevertheless was put to certain expense in

defending the suit and to recover those expenses it brought action against its principal. In deciding favorably to the agent, the court said at page 202:

An agent, compelled to defend a baseless suit, grounded upon acts performed in his principal's business, may recover from the principal the expenses of his defense. We considered the question in *Cory Bros. & Co. v. United States*, 51 F. (2d) 1010, where we did not have to rule upon it; but the cases are unanimous, so far as we have found. *Stocking v. Sage*, 1 Conn. 519; *Powell v. Newburgh*, 19 Johns. (N.Y.) 284; *The James Seddon*, L.R. 1 Ad. & Ec. 62; *In Re Famatina Development Corp'n* (1914) 2 Ch. D. 271 (C.A.); *Herrman v. Leland*, 84 Misc. 82, 145 N.Y.S. 972; *Restatement of Agency*; § 439 (d). In *Howe v. Buffalo, etc., R.R. Co.*, 37 N.Y. 297, and *Clark v. Jones*, 16 Lea (Tenn.) 351, notwithstanding that the agent had lost the suit brought by the third party against him, he recovered of the principal because his conduct was within the scope of his authority, though it was wrongful. The right of recovery in all these instances is only an example of the general doctrine that an agent may recover any expenditures necessarily incurred in the transaction of his principal's affairs. *Bibb v. Allen*, 149 U.S. 481, 499, 13 S. Ct. 950, 37 L. Ed. 819. * * * there is no reason for saying that a general agent's defense of a suit laid upon his conduct of the principal's affairs is not an incident of the business. The doctrine stands upon the fact that the venture is the principal's, and that, as the profits will be his, so should be the expenses. Since by hypothesis the agent's outlay is not due to his mismanagement, it should be regarded only as a loss, unexpected it is true, but inextricably interwoven with the enterprise.

The \$40.00 payment made by appellee to its foreman Trunnell was a reimbursement of the latter of the loss or expenditure incurred by him as a result of the performance of his agency in the furtherance of the business of his principal, the appellee. Thus the \$40.00 was the damage suffered by appellee as a result of appellant's breach of the Agreement. That damage, being the natural conse-

quence and proximate result of appellant's conduct, is the amount for which the latter is liable to appellee. *Fries, Beall & Sharp Co. v. Livingstone*, 56 App. D.C. 209, 210-211, 12 F. 2d 150, 151-152 (1926); *Thompson v. Rector*, 83 U.S. App. D.C. 371, 373, 170 F. 2d 167, 169 (1948); *Himmelstein v. Budner*, 93 F. Supp. 946, 949 (D.C., D.C. 1950).

Appellant makes a contention that substantial and genuine issues of fact exist with respect to the nature of the principal-agent relationship between appellee and Trunnell its foreman. What those facts are appellant does not state.

In contrast to appellant's silence, Section 20(a) of the Agreement states that "The operation, authority and control of each composing room shall be vested exclusively in the office [the newspaper company] through its representative, the foreman, who shall be a member of the Union. No foreman shall be subject to fine, discipline or expulsion by the Union for any act in the performance of his duties as foreman when such action is authorized by this agreement." That section of the Agreement was quoted in the arbitration decision where it was also declared that "All charges made by Mr. Taub [Union official] appear to involve actions by Mr. Trunnell in performing his obligations and duties, expressed or implied, as foreman and representative of management in the operation of the composing room." (J.A. 34-40.) Thus the majority of the arbitrators found that Trunnell was acting as appellee's agent and doing what he was obliged to do as such agent.

Moreover, the record here shows that appellant raised no issue of material fact in the District Court. It filed no deposition, admissions or affidavits to the effect that the "business conditions, the relationship of the parties, and the nature of the agent's undertaking" were such that the appellee was not obligated to reimburse its agent Trunnell. Nor did appellant's answer even make a formal issue as to those matters. In fact the answer admitted that Trunnell was appellee's representative in charge of its composing

room; that the appellant assessed the fine against Trunnell because of acts performed by him as appellee's foreman; and that those acts were authorized by the Agreement. (J.A. 3; 40.) Appellee, on the other hand, substantiated its claim of breach of contract by the exhibits to the complaint (J.A. 6-40), appellant's admission of facts (J.A. 56, 57), stipulation of counsel (J.A. 57-58) and an affidavit (J.A. 58-59.) Thus appellee made a prima facie showing that there was no genuine issue of material fact and by doing so placed the burden on appellant to establish by countervailing material that a genuine issue did exist. Rule 56(c), Federal Rules of Civil Procedure; *Meyers v. District of Columbia*, 17 F.R.D. 216, 220 (D.C., D.C., 1955); *Stahly, Inc. v. M. H. Jacobs Co.*, 183 F. 2d 914, 916 (C.A. 7, 1950), cert. den. 340 U.S. 896; *Foster v. General Motors Corp.*, 191 F. 2d 907, 912 (C.A. 7, 1951). Appellant, having failed to controvert appellee's showing of an absence of a genuine issue of material fact, cannot now complain of the summary judgment being awarded appellee in view of the applicable law.

2. In view of the final and binding arbitration decision of the Joint Standing Committee, there is nothing to be further arbitrated.

The appellant also contends that it was reversible error for the District Court to have failed to decree specific performance of the agreement to arbitrate, as requested in appellant's counterclaim.¹ Appellant asserts that Section 6(b) of the Agreement (J.A. 8) required the appellee to

¹ Appellee does not question Judge Holtzoff's order denying appellee's motion to dismiss appellant's counterclaim for lack of jurisdiction over the subject matter. (J.A. 46-47.) But it is to be noted that Judge Holtzoff in an accompanying opinion stated that he was ruling only on the question of "whether an action lies for the specific performance of an arbitration clause in a collective bargaining agreement under United States Code, Title 29, Section 185, which is also sometimes referred to as Section 101 [sic] of the Taft-Hartley Act." (J.A. 47-49.) Thus Judge Holtzoff took no action with respect to the legal efficacy of appellant's particular counterclaim in this action.

arbitrate since that section provided that "any controversies involving interpretation of this agreement" should be referred to the Joint Standing Committee for arbitration and that whether the Agreement, as interpreted and applied by the Committee in its 1951 decision, compelled the appellant Union to refund the fine assessed against Trunnell was such a controversy.

The fallacy in appellant's argument lies in the fact that the controversy here is whether appellant violated Section 20(a) of the Agreement by fining Trunnell and is, therefore, liable in damages to appellee. The breach of contract issue has been arbitrated. The question that was submitted to the Committee for arbitration is stated in the arbitration decision of November 16, 1951, as follows (J.A. 35):

The question to be decided by the Joint Standing Committee, by stipulation between the parties, is stated as follows:

"Was the disciplinary action taken by the Union against S. K. Trunnell, foreman of the Star, on the basis of action taken on its Executive Committee Report attached hereto, in violation of Section 20(a) of the contract between the parties, which reads:

'Section 20. (a) The operation, authority and control of each composing room shall be vested exclusively in the office through its representative, the foreman, who shall be a member of the Union. No foreman shall be subject to fine, discipline or expulsion by the Union for any act in the performance of his duties as foreman which such action is authorized by this agreement.'

"That the Chairman of the Joint Standing Committee shall not decide whether the Union may or may not discipline a foreman for actions not authorized by the agreement between the parties."

The Joint Standing Committee answered the question submitted in the affirmative by holding the Union's disciplinary action against Trunnell to be a violation of Section

20(a) of the Agreement. That decision was thus stated (J.A. 40):

All the charges made by Mr. Taub appear to involve actions by Mr. Trunnell in performing his obligations and duties, express or implied, as foreman and representative of management in the operation of the composing room. Further, the charges appear to have been of the kind and character that might properly have been presented to the Joint Standing Committee.

Accordingly the undersigned Chairman joins with Messrs. William W. Rodgers and Peyton Evans, in holding that the disciplinary action taken by the Union against S. K. Trunnell, foreman of the Star, on the basis of action taken on its Executive Committee Report, is in violation of Section 20(a) of the contract between the parties.

That decision of the Joint Standing Committee is "final and binding" by the very terms of the Agreement which authorized the arbitration. Section 6(g) provided that "The decision of this Committee shall be final and binding." (J.A. 9.) That provision is a statement in the contract of an accepted principle of law. In *Bayne v. Morris*, 1 Wall. 97, 99, the Supreme Court has stated, "Arbitrators exhaust their power when they make a final determination on the matters submitted to them. They have no power after having made an award to alter it; the authority conferred on them is then at an end." See also *Rust Engineering Co. v. Lehigh Structural Steel Co.*, 65 App. D.C. 77-78, 79 Fed. 2d 830-831 (1935).

Particularly applicable to the appellant's contention for specific performance is the language of the court in *Wabash Ry. Co. v. American Refrigerator Transit Co.*, 7 F. (2d) 335 (C.A. 8, 1925), where at page 351 it is stated, "we see no reason why the parties to the arbitration are not bound as to the questions submitted to and determined by the arbitrator, and precluded from again agitating them." If appellant were to have its way here never would an arbitra-

tion decision be final and binding but the submitted question and the decision thereon would always be subject to being referred for further arbitration. The very purpose of arbitration is to settle disputes with less expense and more expeditiously than can be done through normal court procedure. *Id.*, p. 351; 3 Am. Jur., Arbitration and Award, Sec. 2, p. 830.

Appellant, faced with the principle of finality of an arbitration decision, cites several cases as exceptions to that rule. One of those cases is *Order of Railroad Telegraph. v. New York Cent. R. Co.*, 181 F. 2d 113 (C.A. 2, 1950). However, as the court's opinion there makes clear, the arbitration in that case was conducted pursuant to the provisions of the Railway Labor Act, 45 U.S.C.A., Sec. 151 et seq. Express provision is made in the Railway Labor Act for resubmitting to the arbitrators any controversy arising over the meaning or application of a prior award made by those arbitrators. See Sec. 155, Third (d) and Sec. 157 Third (e) of 45 U.S.C.A. And the Railway Labor Act required the parties entering into an agreement to arbitrate to provide that any difference arising as to the meaning or the application of the provisions of an award made by arbitrators shall be referred back to them for a ruling. Sec. 158 (m), 45 U.S.C.A. But the Agreement in the instant case expressly provides, as has been hereinbefore noted, that the arbitration decision "shall be final and binding" upon the plaintiff and the defendant. It makes no provision for a "referred back" ruling by the Joint Standing Committee. Thus, *Order of Railroad Telegraph. v. New York Cent. R. Co.* is a most inapposite authority for defendant to cite.

Nor are the other cases cited in the first complete paragraph on page 19 of appellant's brief pertinent here. In three of the cases the arbitration was conducted pursuant to state statutes. That legislation specifically provided that, under certain circumstances, the controversy

could be resubmitted by a court to the arbitrators for rehearing. *Pope Const. Co. v. State Highway Commission*, 337 Mo. 30, 84 S.W. 2d 920, 920-921 (1935); *Pierce Steel Pile Corporation v. Flannery*, 319 Pa. 332, 179 A. 558, 560 (1935); *Johnston v. Paul*, 22 Minn. 17, 18 (1875). In one case cited, the controversy was under a rule of court and the court referred it to referees. The report of the referees was under the control of the court and the latter could resubmit it when it considered justice so required. *Cumberland v. North-Yarmouth*, 4 Me. 459, 463-464 (1827). And a Pennsylvania case, though the opinion was most brief, indicates that the reference of the dispute to referees was also by the court which exercised control over the award. *Bowers v. Warrell*, 1 Browne 170 (Pa. Common Pleas, 1810). One case held that, where the arbitrator failed to consider and decide a part of the dispute submitted to him, the award was invalid because incomplete; and, since the arbitration agreement was still in force, it was competent for the arbitrator to finish his work by making a full and complete award. *Frederick v. Morgworth*, 221 Pa. 418, 419-420, 70 A. 797 (1908).

In an Arizona case the arbitrators' award failed to consider one item of the controversy and since the arbitration agreement was still in force, and particularly since it provided for successive awards, it was held that the arbitrators had the authority to finish their work by making a full and complete award. *Cracchiolo v. Carlucci*, 62 Ariz. 284, 157 P. 2d 352, 354-355 (1945). It was held by the Virginia Court of Appeals that arbitrators could alter their award before they had delivered it to the parties as their final decision. *Byors v. Thompson*, 12 Leigh (Va.) 550 (1841).

The case here on appeal bears no resemblance to the cases just referred to. Here, there is neither a statute nor rule of court prescribing rules for arbitration. The Joint Standing Committee's decision dealt fully and con-

clusively with the question submitted—there was nothing left undecided. And the only authority for the arbitration—the collective bargaining agreement—provided that the arbitration decision was “final and binding.”

Nor can it be said that, because the decision of the arbitrators in this case did not make a money award, its finality was affected. In *Wabash Ry. Co. v. American Refrigerator Transit Co.*, 7 F. (2d) 335, 350-351 (C.A. 8, 1925) the arbitrators' decision made no money award but, as in the instant case, it merely determined the rights of the parties. And, in *Canuso v. City of Philadelphia*, 326 Pa. 302, 192 A. 133, 136 (1937), the court stated, “Defendant's contention that the director's [arbitrator's] decision was not conclusive because it did not determine the amount of the damage is clearly untenable, for the amount of the damages was not in dispute and did not, therefore, require the arbitrator's consideration.” In the question submitted to the Joint Standing Committee the amount of the fine levied by the appellant against Trunnell was not in dispute and, therefore, there was no need for the Committee to consider that amount.

From the foregoing it is submitted that the June 12, 1951 Agreement (J.A. 6-34) not only does not require appellee to resubmit to arbitrators the question heretofore decided that appellant violated the contract but, since that decision is final and binding on both parties by the very terms of that Agreement, the question cannot be resubmitted for arbitration.

Appellant also contends that it and the appellee, in a letter dated March 30, 1954 to Mr. Fred J. Eden, the Chairman of the Joint Standing Committee (J.A. 43-44), agreed to submit “to further arbitration” the question of whether it was the intention of the Committee in making its November 16, 1951 decision to require the appellant Union to refund to Trunnell the fine he had paid it. That

alleged agreement, the appellant argues, authorized the Committee to further arbitrate the controversy.

The answer to that argument is that there was no agreement by the parties here for any further arbitration. A reading of the March 30, 1954 letter makes that clear. That letter, after quoting the four final paragraphs of the Committee's decision, which included its holding that appellee violated the agreement, asks the question "was it the intention of the Joint Standing Committee in making that decision to require Columbia Typographical Union, Local No. 101, to refund to S. K. Trunnell the fine he had paid?" That inquiry cannot be considered, under any circumstances, a resubmission to arbitration of any question. It was only a request for an expression of the Committee's intention at the time, November 16, 1951, it made its arbitration decision. The question of the Committee's intention is not one subject to arbitration.

It was when appellant, in letters from its counsel to counsel for appellee, dated April 2, 1954 and April 8, 1954 (J.A. 51 and 53), stated that it desired to present to the Committee, either by stipulation or witnesses or a brief, "matters not of record," that appellee withdrew its request for a statement of the intention of the Committee in making its 1951 decision. New matter presented to the Committee in 1954 could have had nothing to do with its intention in 1951. That such was the reason for appellee for withdrawing its request of the Committee is evidenced by the exchange of letters of counsel and the April 20, 1954 letter from appellee's counsel to the Chairman of the Committee. (J.A. 51, 52, 53, 54 and 55). Moreover, those letters are further evidence that appellee did not agree on March 30, 1954 with appellant to submit any question to arbitration. Since there was never such an agreement, appellee could not have violated it.

Appellant in its brief (pp. 15-16) states that the Committee's arbitration decision was ambiguous "as to its

intent to intrude into the union's internal affairs and affirmatively to command the recision of the union's imposition of a fine against one of its members." This is a baseless contention in light of the limitations placed upon and the action taken by Chairman Eden, who with two publisher members of the Committee, made the November 16, 1951 decision. By stipulation the parties provided "That the Chairman of the Joint Standing Committee shall not decide whether the Union may or may not discipline a foreman for actions not authorized by the agreement between the parties." (J.A. 35.) "No such decision will be made" are the words of the Chairman in writing the arbitration decision. (J.A. 39.) And then the Chairman decided that Trunnell was fined by appellant Union for "performing his obligations and duties, expressed or implied, as foreman and representative of management in the operation of the composing room" and that such action by the Union was "in violation of Section 20(a) of the contract between the parties." (J.A. 40.) There was no ambiguity in that decision. It was expressly stated that the decision had nothing to do with the Union and its power of discipline over a foreman "for actions not authorized by the agreement between the parties." It clearly held that it was for acts authorized by the contract that Trunnell was fined.

Appellant further contends that, since the 1951 arbitration decision did not state whether the Union should refund the fine Trunnell paid, it was not "a proper decision" which was "final and binding" on the parties. (Appellant's brief, 20.) But, as has been noted above, an arbitration decision to be final and binding need not make a money award when the amount is not in dispute and where the decision did determine the rights of the parties. *Wabash Ry. Co. v. American Refrigerator Transit Co.*, 7 F. 2d 335, 350-351 (C.A. 8, 1925); *Canuso v. City of Philadelphia*, 326 Pa. 302, 192 A. 133, 136 (1937). As has been seen there has never been any question as to the amount of the fine

imposed on Trunnell. It was \$40.00. And in its 1951 decision the Committee clearly stated that it was appellant which violated Section 20(a) of the Agreement when it fined Trunnell and that was a determination of the rights of the parties. Therefore, the decision here was a "proper decision", which is final and binding. The effect of that decision on appellant Union was to find it guilty of a breach of contract and, as has been demonstrated above, the natural consequence of appellant's disregard of appellee's rights is to make the Union liable for \$40.00 damages to appellee. The District Court so held and, it is submitted, that judgment was a proper one.

CONCLUSION

For the foregoing reasons, the judgment of the District Court should be affirmed.

Respectfully submitted,

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